

Exhibit 16

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,

સાધુઓની પ્રાચીન લિખિતીની પ્રાપ્તિ

Plaintiff,

88

V.

§§§

Case No. 1:22-CV-000983-VEC

STOCKX LLC,

§§

Defendant.

e s s s

EXPERT REPORT OF ROBERT L. VIGIL, Ph.D.

May 5, 2023

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I. Introduction

A. Assignment

1. I have been retained by StockX LLC (“StockX”) to provide expert analysis and testimony regarding the harm that may have been sustained by Nike, Inc. (“Nike”) due to StockX’s alleged false advertising identified in Nike’s First Amended Complaint¹ and in discovery. In particular, in this report, I have been asked to examine 1) the extent to which Nike has suffered harm due to StockX’s alleged false advertising, and 2) the extent to which StockX has profited from its alleged false advertising.

2. This report is based on the information that was available to me as of the date of this report. I understand that discovery in this case is ongoing. Accordingly, I reserve the right to revise, supplement, or expand my opinions before trial, if necessary and allowed, based on review and analysis of information provided to me subsequent to the disclosure of this report.

B. Summary of Conclusions

3. While Nike has claimed that its trademarks, business reputation, and goodwill have all been harmed by StockX’s “sale, distribution, and advertising of its Vault NFTs” and StockX’s allegedly false claims (including, for example, that “every item StockX sells on its e-commerce platform … has been independently verified by StockX as ‘100% Verified Authentic’”), Nike has [REDACTED] tied to StockX’s alleged conduct. Nike attempts to support its claims [REDACTED]

¹ First Amended Complaint, *Nike, Inc. v. StockX LLC*, United States District Court for the Southern District of New York, Case 1:22-cv-00983-VEC, May 25, 2022 (“Amended Complaint”).

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] and Nike has informed the Court that it considers its own financial performance irrelevant to its damages theories in this action.

4. While Nike has objected to producing any material that would allow one to assess the extent of harm it has suffered, on the grounds that it was not relevant to Nike’s damages theory, a review of evidence from the public domain does not suggest that Nike has been materially harmed due to StockX’s alleged conduct. Among other things, Nike earnings calls and analyst reports covering Nike suggest that Nike’s brands and customer loyalty remain strong and have continued to grow. These sources do not mention any material impairment to Nike’s brand, reputation, or goodwill, in general, over the period at issue, and do not mention any negative impact (such as diminished brand, reputation, or goodwill) from StockX’s alleged actions, in particular.

5. There also is no evidence that sales were diverted from Nike to StockX. This is no surprise in light of the fact that StockX and Nike generally compete in different marketplaces and that the kinds of products available on StockX’s marketplace are usually limited-edition products not available directly from Nike for very long after their initial release. The lack of a sales impact to Nike from StockX’s alleged actions is [REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]³ There similarly were no mentions of diverted sales from Nike to secondary platforms, or StockX specifically, in Nike’s earnings calls or analyst reports.

6. Not only is there no evidence of actual harm to Nike from StockX’s actions, Nike appears to benefit significantly from StockX’s platform and actions. The existence of vibrant resale marketplaces for a brand’s products brings more attention and consumers to the brand and can have a substantial halo effect on the brand’s reputation. Resale marketplaces can drive additional primary sale activity because the primary sale will also attract individuals interested in reselling, not solely those interested in directly using the product, and can thus expand the universe of consumers exposed to the brand’s products beyond those who can access the products at primary sale. Several analysts have noted how secondary platforms such as StockX provide important benefits to Nike, including awareness, liquidity, and consumer demand.

7. Evidence suggests that Nike benefits from StockX’s verification process, which took hundreds of millions of dollars of investment to develop and execute. StockX’s verification process has led to the removal of more than \$500 million worth of products that did not meet StockX’s verification standards and has prevented more than \$70 million worth of suspected counterfeit sneakers from trading on its platform. StockX’s verification process has increased the costs and risks to would-be counterfeiters, and has incentivized other platforms to also begin offering authentication services. StockX’s efforts to maintain the quality of the goods traded on

² Deposition of Barbara Delli Carpini, January 10, 2023 (“Carpini Deposition”), at p. 246.
³ Carpini Deposition, at pp. 240-241.

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the platform have resulted in high purchase satisfaction among StockX’s customers. Brands like Nike stand to benefit from StockX’s verification efforts because consumers are less likely to receive inauthentic items featuring these brands’ trademarks, meaning the theoretical harm that Nike speculated it might suffer is less likely to materialize.

8. While Nike similarly claims that “StockX has obtained gains, profits, and advantages as a result of its wrongful acts,” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Evidence suggests that StockX would be harmed by the sale of substantial counterfeit products on its platform because it bears the cost of product returns and because it would incur reputational harm from allowing such sales.

9. Although StockX has generated substantial revenues, [REDACTED] [REDACTED] it is important to note that numerous factors have contributed to StockX’s popularity that are unrelated to the allegations in this case. While authenticity is one of the factors that may drive consumer purchase decisions of sneakers and other such current culture items, other variables similarly factor into the consumer purchase decision making process, such as speed of delivery, availability of scarce or unique products, price transparency, value for the price, and customer experience. In fact, surveys confirm that StockX is best known for some of these other platform attributes.

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C. Qualifications

10. I am a Principal at Analysis Group, Inc. (“Analysis Group”). Analysis Group provides economic and financial analysis for complex litigation, regulatory proceedings, and corporate strategic planning. Analysis Group maintains offices in Beijing, China; Boston, MA; Brussels, Belgium; Chicago, IL; Dallas, TX; Denver, CO; London, United Kingdom; Los Angeles, CA; Menlo Park, CA; Montreal, Quebec; New York, NY; Paris, France; San Francisco, CA; and Washington, DC.

11. I specialize in the application of economics and finance to intellectual property and general commercial litigation matters. My work includes assessments of damages in complex litigation cases, including analyses of lost profits, reasonable royalties, price erosion, and unjust enrichment. I also have assisted companies, outside the context of litigation, in solving various business-related problems. Among other things, this work has involved the valuation of various types of assets, including intellectual property, products, and businesses, as well as providing assistance with economic and financial best practices related to pricing, competition, marketing, and optimal product/service positioning. In addition, I have taught classes and given presentations on numerous valuation, damages, and business related topics.

12. I graduated from Pepperdine University in 1990 with a Bachelor of Arts degree in Economics. I also received a Ph.D. in economics from the University of Maryland in 1998. In 2008, I was granted the Certified Licensing Professional (“CLP”) designation by the Licensing Executive Society. My resume is attached as Exhibit 1. It describes all of my testimony, publications, and speeches to date.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**D. Compensation**

13. My hourly billing rate for the time spent consulting and analyzing issues in this case, which includes my study of pertinent issues and materials, and any testimony I might give, is \$850. I also have directed the efforts of others at Analysis Group, whose hourly billing rates range from \$425 to \$945. My compensation or that of my colleagues is not dependent upon the outcome of this case or my findings.

E. Evidence Considered

14. In undertaking my analysis, I have considered information from a variety of sources, each of which has been identified in Exhibit 2.⁴ I also have relied upon my professional judgment and expertise, gathered from many years of conducting economic analyses and calculating damages.

II. Background**A. Parties-in-Suit****1. Nike**

15. Founded in 1967, Nike is the largest seller of athletic footwear and apparel in the world as of 2022, with global revenues of more than \$46.7 billion.⁵ Nike’s primary business involves the development, design, marketing and selling of products including athletic footwear, sports apparel, and performance equipment and accessories.⁶ In the United States, Nike products

⁴ Throughout this report, I have cited specific documents as support of various facts or opinions. These citations are not intended to represent all of the evidence that supports these facts and opinions, but are intended to be illustrative of the types of evidence that I have reviewed.

⁵ Nike, Inc., Form 10-K for the Fiscal Year Ended May 31, 2022 (“Nike 2022 10-K”), at pp. 1, 29.

⁶ Nike 2022 10-K, at p. 1.

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are sold either directly to consumers through Nike’s digital platforms (*e.g.*, website) and brick-and-mortar stores, or are sold to retailers, such as footwear and sporting goods stores, that subsequently sell products to consumers.⁷ Through its digital platforms, Nike also offers interactive consumer services, experiences, and digital products such as fitness apps and sports and wellness content.⁸ Nike sells products under various brands including the Nike Brand, offering performance athletic footwear, apparel and accessories, and the Jordan Brand, offering athletic and casual footwear, apparel and accessories focused on basketball performance and culture.⁹ Nike does not directly operate in the “secondary marketplace” (*i.e.*, it does not facilitate the resale of genuine Nike products).¹⁰ Accordingly, from time to time, Nike will refer customers who are unable to purchase products directly from Nike to secondary marketplace platforms (*e.g.*, StockX).¹¹

16. In 2021 and 2022, Nike took several steps to expand its digital offerings. In December 2021, Nike announced that it acquired digital art and collectible collective RTFKT, the

⁷ Nike 2022 10-K, at pp. 1-2.

⁸ Nike 2022 10-K, at p. 2.

⁹ Nike 2022 10-K, at pp. 2, 62.

¹⁰ Carpin Deposition, at p. 244. In 2021, Nike launched “Nike Refurbished” program, “which takes returns for gently worn, like-new or imperfect footwear, and refurbishes and cleans them to be resold at Nike stores at a discount.” The Nike Refurbished program only includes shoes that were purchased from Nike and subsequently returned to Nike, and Nike does not purchase or accept donations of used shoes to sell in the program. Salpini, C., “Nike Launches Refurbishment Program in 15 Stores,” RetailDive, April 12, 2021, available at <https://www.retaildive.com/news/nike-launches-refurbishment-program-in-15-stores/598216/>, accessed April 27, 2023; “Nike Refurbished,” Nike, available at <https://www.nike.com/sustainability/nike-refurbished>, accessed May 3, 2023.

¹¹ NIKE0039100 (“This product was a launch product that was available only for a moment on our site and SNKRS app. Unfortunately, it is no longer available. I can only say that it is not available on our site or in Nike stores... So I would check if sites that are selling those products are eligible. You can check customers review online and see if they are selling fakes. A lot of sites do it, however you can find some that are selling original products! I think that StockX is a good place to buy this product.”).

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creators of popular apparel-related NFTs.¹² Over the first few months of 2022, Nike and RTFKT launched several NFTs, including, for example, the MNLTH NFT collection, the Nike Dunk Genesis CryptoKicks™ NFTs, and the Evo Skin Vial NFTs.¹³ In November 2022, Nike also launched .SWOOSH, a platform for members to collect and trade virtual Nike shoes, jerseys, and accessories.¹⁴

2. StockX

17. Founded in 2015, StockX is an e-commerce platform for luxury goods, such as sneakers, streetwear, handbags and other collectibles.¹⁵ StockX is shorthand for Stock Market of Things, where, as in the actual stock market, resale prices are determined by supply and demand.¹⁶ StockX operates a marketplace that utilizes bidding to match multiple buyers and sellers of the same product (*e.g.*, a pair of collectible Nike sneakers).¹⁷ Once the seller’s ask and buyer’s bid coincide, the sale is considered complete, subject to the item passing StockX’s verification

¹² Amended Complaint, ¶ 43; “Nike Acquires RTFKT,” Nike Newsroom, December 13, 2021, available at <https://about.nike.com/en/newsroom/releases/nike-acquires-rtfkt>, accessed May 3, 2023.

¹³ Amended Complaint, ¶¶ 45-46.

¹⁴ “Nike Launches .SWOOSH, a New Digital Community and Experience,” Nike Newsroom, November 14, 2022, available at <https://about.nike.com/en/newsroom/releases/nike-launches-swoosh-a-new-digital-community-and-experience>, accessed May 3, 2023; “Day 1,” dotSWOOSH Blog, November 14, 2022, available at <https://blog.swoosh.nike/day-1-dcdcb1be48b7>, accessed May 3, 2023.

¹⁵ Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023; STX0774286-308, at 293.

¹⁶ See, e.g., “StockX: The Stock Market for Things,” Harvard Business School, March 24, 2020, available at <https://d3.harvard.edu/platform-digit/submit/stockx-the-stock-market-for-things/>, accessed April 27, 2023; Deposition of Brock Huber, February 22, 2023 (“Huber Deposition”), at p. 54.

¹⁷ Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023.

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process.¹⁸ Every product sold on StockX is shipped from the seller to StockX where it undergoes a manual inspection, verification, and quality control process before being shipped to the buyer.¹⁹ StockX verifies that the product is brand new and has never been worn and meets other standards established by StockX, including that the product does not appear to have any manufacturing defects and does not appear to be inauthentic.²⁰ StockX maintains 14 physical verification centers globally and employs more than 300 authenticators who are trained to inspect products for compliance with StockX’s standards.²¹ According to StockX’s Vice President of Corporate and Strategic Development and StockX’s Rule 30(b)(6) designee, Mr. Brock Huber, StockX was the first online marketplace to provide verification services for every product sold on its platform.²²

18. StockX generates most of its revenue by charging transaction fees, payment processing fees, and shipping fees on each sale to the buyers and sellers that use the platform.²³

¹⁸ Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023; “The Current Culture Marketplace,” StockX, available at <https://stockx.com/about/how-it-works/>, accessed April 28, 2023.

¹⁹ Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023; “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²⁰ “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²¹ “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²² Huber Deposition, at pp. 244-245. *See also*, Townsend, C., “What Does StockX Verified Actually Mean?” Sole Retriever, January 26, 2023, available at <https://www.soleretriever.com/news/articles/what-does-stockx-verified-actually-mean>, accessed May 1, 2023.

²³ Both buyers and sellers pay percentage transaction and payment processing fees based on the value of a sale. STX0774309-336, at 316 (“[StockX] generates revenues from transaction fees, payment processing fees and shipping fees charged to sellers and buyers who use [StockX’s] marketplace platform to transact with one another. Sellers are able to place an ask for their items on [StockX’s] online marketplace at no charge. Sellers are charged a transaction fee upon the sale of products on its online marketplace. [StockX] has a tiered transaction fee structure for sellers, which is based on the category of the product as well as historical sales volumes by that seller. In addition, sellers are also charged a percentage payment processing fee. Buyers are charged a percentage processing fee subject to a fixed dollar amount minimum or maximum

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StockX has grown rapidly since its founding, reaching a \$1 billion valuation in mid-2019 and a \$3.8 billion valuation in April 2021.²⁴ This notwithstanding, as is common among technology-sector startup companies, [REDACTED]

[REDACTED] As of the end of 2022, StockX has facilitated more than 40 million trades in over 200 countries.²⁶

19. In January 2022, StockX launched Vault NFTs, digital proof of ownership of physical products that StockX stored in its “Vault” (a secure storage facility) in order to make trading more efficient.²⁷ Goods that are bought and sold on StockX’s platform typically must be re-authenticated for each transaction.²⁸ However, Vault NFTs can be traded on StockX’s platform nearly instantaneously, without the need to re-ship or re-authenticate the underlying physical product, because the product remains stored in StockX’s vault, allowing consumers to save on shipping fees and costs, avoid the possibility of loss or damage in transit, and avoid the need to

fee. [StockX] also charges shipping fees to buyers and certain sellers.”); Huber Deposition, at p. 41 (“So components of our revenue would include selling fees, buying fees, seller shipping, buyer shipping, seller penalty fees, inventory sales, and … any other revenue-generating activity that StockX engages in.”).

²⁴ Farrell, M., “StockX Valued at \$3.8 Billion and Lets Employees Sell Shares,” The Wall Street Journal, April 7, 2021, available at <https://www.wsj.com/articles/stockx-valued-at-3-8-billion-and-lets-employees-sell-shares-11617830099>, accessed May 3, 2023.

²⁵ See, e.g., STX0774309-336, at 312; STX0774286-308, at 290.

²⁶ “StockX Expands Access to Suite of Seller Tools, Helping More Customers Grow Their Businesses,” StockX, February 21, 2023, available at <https://stockx.com/about/stockx-expands-access-to-suite-of-seller-tools-helping-more-customers-grow-their-businesses/>, accessed May 3, 2023.

²⁷ “StockX Launches Vault NFTs,” StockX, January 18, 2022, available at <https://stockx.com/about/stockx-launches-vault-nfts/>, accessed May 3, 2023.

²⁸ “StockX Launches Vault NFTs,” StockX, January 18, 2022, available at <https://stockx.com/about/stockx-launches-vault-nfts/>, accessed May 3, 2023.

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carefully store products themselves to protect against loss of value.²⁹ Because they function as proof of ownership, Vault NFTs can also be redeemed for the corresponding physical item.³⁰

B. Alleged Misconduct

20. Nike’s Amended Complaint alleges that StockX “has knowingly used and continues to use” Nike’s trademarks in connection with the sale of Vault NFTs, which “is likely to confuse, mislead, or deceive potential consumers, purchasers, and the general purchasing public as to the source, origin, sponsorship, or affiliation of the Vault NFTs with Nike.”³¹ As a result, Nike alleges that it “has suffered, continues to suffer, and/or is likely to suffer damage to its trademarks, business reputation, and good will that money cannot compensate.”³² In addition, Nike alleges that StockX has “falsely and/or misleadingly claim[ed] that all Nike products sold on StockX’s platform are ‘100% Verified Authentic’ genuine, non-counterfeit goods manufactured by Nike” while StockX has, in fact, sold counterfeit Nike products.³³ Nike claims that StockX made misleading statements “in order to take advantage of Nike’s immense goodwill and to induce consumers to purchase Nike shoes on the StockX platform” and, as a result, StockX is “injuring Nike’s reputation in the marketplace” and “diverting consumer purchases of genuine Nike goods.”³⁴

²⁹ “StockX Launches Vault NFTs,” StockX, January 18, 2022, available at <https://stockx.com/about/stockx-launches-vault-nfts/>, accessed May 3, 2023.

³⁰ “StockX Launches Vault NFTs,” StockX, January 18, 2022, available at <https://stockx.com/about/stockx-launches-vault-nfts/>, accessed May 3, 2023.

³¹ Amended Complaint, ¶¶ 125-127.

³² Amended Complaint, ¶ 129.

³³ Amended Complaint, ¶ 173.

³⁴ Amended Complaint, ¶ 174.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**III. Harm to Nike****A. Nike’s Allegations**

21. In its Amended Complaint, Nike claims that StockX harmed Nike by using Nike trademarks in relation to StockX’s Vault NFTs.³⁵ According to Nike, StockX has “knowingly used and continues to use” Nike’s trademarks “in connection with the sale, distribution, and advertising of its Vault NFTs” without Nike’s permission or authorization.³⁶ Nike claimed in its Amended Complaint that there was no collaboration or agreement on licensing between Nike and StockX in relation to the Vault NFTs, and Nike “has no control over the quality of the Vault NFTs whatsoever.”³⁷ Nike alleges that StockX’s actions have harmed and, unless enjoined, will continue to harm Nike in several ways.

22. First, Nike alleges that StockX’s unauthorized use of Nike’s trademarks is likely to cause consumer confusion “as to the origin, sponsorship, or approval of StockX’s Vault NFTs by creating the false and/or misleading impression that StockX’s Vault NFTs are produced by, authorized by, or otherwise associated with Nike.”³⁸ Nike alleges that StockX’s alleged trademark infringement has and will continue to “damage [Nike’s] trademarks, business reputation, and good will that money cannot compensate.”³⁹ According to Nike, StockX’s continued use of Nike’s trademarks “will cause irreparable damage to Nike, Nike’s [trademarks], and to the business and good will represented thereby.”⁴⁰

³⁵ Amended Complaint, ¶¶ 5-6, 8, 10-11, 15.

³⁶ Amended Complaint, ¶¶ 125.

³⁷ Amended Complaint, ¶¶ 92-94.

³⁸ Amended Complaint, ¶ 135.

³⁹ Amended Complaint, ¶¶ 129, 136.

⁴⁰ Amended Complaint, ¶¶ 129, 136.

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23. Second, Nike claims that StockX’s use of Nike trademarks and products in association with Vault NFTs and their promotion has diluted the value of Nike’s trademarks.⁴¹ Specifically, Nike alleges that StockX’s use of Nike’s trademarks “dilute[s] the distinctive quality of Nike’s [trademarks]” and “tarnish[s] the fame of Nike’s [trademarks] by undermining and damaging the valuable good will associated therewith.”⁴² As above, Nike asserts that this “ha[s] already caused Nike irreparable damage and will, unless enjoined, continue to so damage Nike.”⁴³

24. Third, Nike alleges that StockX’s use of Nike’s trademarks has injured Nike’s business reputation. In particular, according to Nike, StockX’s unauthorized use of Nike’s trademarks “diminish[es] the capacity of Nike’s [trademarks] to function as unique product identifiers for Nike’s goods and services,” thereby “tarnish[ing] Nike’s [trademarks] by creating negative associations with Nike, its [trademarks], and the associated business reputation and good will.”⁴⁴ According to Nike’s Amended Complaint, this has “already caused Nike irreparable damage and will, unless enjoined, continue to so damage Nike.”⁴⁵

25. In its Amended Complaint, Nike also claims that StockX has harmed Nike because counterfeit Nike products were allegedly sold on the StockX platform, despite StockX allegedly having previously represented that “every item StockX sells on its e-commerce platform … has been independently verified by StockX as ‘100% Verified Authentic.’”⁴⁶ In a December 12, 2022

⁴¹ Amended Complaint, ¶ 143.

⁴² Amended Complaint, ¶¶ 143-144.

⁴³ Amended Complaint, ¶ 145.

⁴⁴ Amended Complaint, ¶¶ 154-155.

⁴⁵ Amended Complaint, ¶ 156.

⁴⁶ Amended Complaint, ¶ 110. I understand from Counsel that Nike has subsequently identified additional claims that are at issue, including “Buy & Sell Authentic Sneakers” and “every sneaker you buy is always available and authentic.”

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letter to the Court, Nike claimed that “[d]iscovery to date shows that StockX … sold to consumers almost 80 counterfeit ‘Nike’ shoes.”⁴⁷ According to Nike, “[t]he confirmed purchase of counterfeit Nike goods on StockX’s platform … directly undermines StockX’s ‘100% Verified Authentic’ claims and its claims about the ‘proprietary multi-step verification process’ it employs to authenticate goods and renders these statements false and/or misleading.”⁴⁸

26. Nike alleges that third-party sales of allegedly counterfeit product on StockX’s platform have harmed the reputation of Nike’s products and caused Nike financial harm. This allegation notwithstanding, as discussed below, Nike has not produced evidence of reputational or financial harm tied to StockX’s alleged conduct, and has objected to producing material that would allow one to assess the extent of diverted sales or other actual harm on the grounds that it was not relevant to Nike’s damages theory.⁴⁹ According to Ms. Carpi, Nike’s Vice President of Brand Protection and IP Enforcement and Rule 30(b)(6) witness on the topic of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁷ Nike’s Letter Re: *Nike, Inc. v. StockX LLC*, Case No. 1:22-cv-00983-VEC (S.D.N.Y.), ECF 080, December 12, 2022, at p. 1. *See also*, Amended Complaint, ¶ 107.

⁴⁸ Amended Complaint, ¶ 110. According to Nike, “[i]n its pervasive advertising and marketing, StockX explicitly claims and guarantees that every item it sells—including those items purportedly associated with the Vault NFTs—has been independently verified by StockX as ‘100% Verified Authentic’ through its ‘proprietary’ process.” *See* Amended Complaint, ¶ 172.

⁴⁹ *See, e.g.*, Nike’s Letter Re: *Nike, Inc. v. StockX LLC*, Case No. 1:22-cv-00983-VEC (S.D.N.Y.), ECF 089, December 19, 2022, at p. 5 (“Nike’s revenues for sales of its genuine shoes are not relevant to Nike’s counterfeiting claim and its statutory damages remedy nor StockX’s defenses thereto.”), at p. 3 (“But Nike’s revenues from its sale of Nike-branded virtual goods are not relevant to Nike’s claims—or damages flowing therefrom—directed to StockX’s false and/or misleading advertising claims regarding the authenticity of physical shoes sold on its marketplace.”).

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27. Nike also alleges that by “falsely and/or misleadingly claiming that all Nike products sold on StockX’s platform are ‘100% Verified Authentic’ genuine, non-counterfeit goods manufactured by Nike, when, in fact, StockX is selling to consumers counterfeit Nike shoes,” StockX has “take[n] advantage of Nike’s immense goodwill … to induce consumers to purchase Nike shoes on the StockX platform.”⁵² As a result, according to Nike, “StockX’s false and/or misleading statements are causing immediate and irreparable injury to Nike, by injuring Nike’s reputation in the marketplace, diverting consumer purchases of genuine Nike goods, and will continue to damage Nike and deceive consumers unless enjoined by this Court.”⁵³

28. Ms. Carpini asserts that,

⁵⁰ Carpinii Deposition, at p. 32. *See also*, Carpinii Deposition, at p. 242 (

⁵¹ Carpin Deposition, at pp. 241-242

52 Amended Complaint, ¶¶ 173-174.
53 Amended Complaint, ¶ 174.

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██████████ According to Ms. Carpini ██████████

██████████

██████████ ██████████

██████████, as noted above, Nike has maintained that its revenues and other financial information relating to its primary sales – which could establish, for example, whether or not sales have been diverted from Nike – are irrelevant to Nike’s claim for damages.⁵⁶

B. Nike Is Not Seeking Damages from Actual Harm

29. Although Nike claims that as a consequence of StockX’s alleged misconduct, “Nike has suffered, continues to suffer, and/or is likely to suffer damage to its trademarks, business reputation, and good will,”⁵⁷ Nike has represented to StockX and the Court that it is not seeking any damages flowing from actual harm to its business, or in connection with StockX’s sale of Vault NFTs, and that it seeks only statutory damages in response to its counterfeiting claim rather than actual damages.⁵⁸ As detailed above, Nike alleges that the harm to its trademarks, business

⁵⁴ Carpini Deposition, at p. 242. *See also*, Carpini Deposition, at p. 243 (“██████████”).

⁵⁵ Carpini Deposition, at p. 33.

⁵⁶ *See, e.g.*, Nike’s Letter Re: Nike, Inc. v. StockX LLC, Case No. 1:22-cv-00983-VEC (S.D.N.Y.), ECF 089, December 19, 2022, at p. 5 (“[B]ecause Nike has elected to only seek injunctive relief against StockX’s Vault NFT offerings, StockX’s RFP No. 54-56 and Topic No. 15 relating to Nike’s NFT revenues are not relevant to this case in any way. And because Nike seeks statutory damages for StockX’s sale of counterfeit Nike goods, StockX’s Topic No. 16 relating to Nike’s revenues on sales of specific genuine shoes are also not relevant to any claim or defense in this case.”).

⁵⁷ Amended Complaint, ¶ 129.

⁵⁸ *See, e.g.*, Nike’s Letter Re: Nike, Inc. v. StockX LLC, Case No. 1:22-cv-00983-VEC (S.D.N.Y.), ECF 089, December 19, 2022, at p. 1 (“Nike will not seek monetary damages specifically in connection with its claims against StockX’s unauthorized Nike-branded NFTs.”), at p. 3 (“Nike’s revenues from its sale of Nike-branded virtual goods are not relevant to Nike’s claims—or damages flowing therefrom—directed to StockX’s false and/or misleading advertising claims.”), at p. 2 (“Nike’s revenues on its sales of any specific shoes are not relevant to Nike’s pursuit of statutory damages for StockX’s counterfeiting.”).

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and goodwill is “irreparable” (*i.e.*, cannot be quantified with reasonable degree of economic certainty).⁵⁹ While Nike is not pursuing damages based on actual harm, it is, however, “pursuing monetary damages for its false advertising claim, including disgorging StockX’s ill-gotten profits that are attributable to its false and/or misleading claims.”⁶⁰

C. Nike Has Provided No Evidence of Material Harm

1. No evidence of material harm from StockX’s trading of Vault NFTs

30. Nike appears to support its claim of likely “confusion in the marketplace as to the Vault NFTs’ source and whether Nike is in any way involved” solely through a small number of anecdotal examples in its pleadings.⁶¹ Nike’s corporate witnesses [REDACTED]

[REDACTED]⁶² My examination of the evidence Nike included in its pleadings indicates that such evidence does not show any meaningful harm, financial or otherwise, to either consumers of StockX’s Vault NFTs or to Nike.

31. Specifically, in its Amended Complaint, Nike points to six social media posts.⁶³ Some of these posts simply question whether Nike has endorsed StockX’s Vault NFT offerings, while others question whether Nike is compensated for the trades involving these Vault NFTs.⁶⁴

⁵⁹ See, e.g., Amended Complaint, ¶ 129.

⁶⁰ Nike’s Letter Re: Nike, Inc. v. StockX LLC, Case No. 1:22-cv-00983-VEC (S.D.N.Y.), ECF 089, December 19, 2022, at pp. 1-2, 5.

⁶¹ See, e.g., Amended Complaint, ¶¶ 99, 127, 135.

⁶² Carpinini Deposition, at p. 261; Deposition of Melanie Harris, January 19, 2023 (“Harris Deposition”), at pp. 224-230.

⁶³ Amended Complaint, ¶¶ 99-103.

⁶⁴ Amended Complaint, ¶¶ 99-103. Two instances of consumer confusion cited by Nike’s Amended Complaint appear to be examples of consumers questioning Nike’s relationship with Vault NFTs. See Amended Complaint, ¶ 99 (“So are they just selling NFTs of other companies’ products? Is this legal? ... [I

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Nike also points to one media article discussing (erroneously) Nike’s apparent support for StockX’s Vault NFTs.⁶⁵ To date, Nike has provided no evidence showing that any consumer actually purchased a StockX Vault NFT incorrectly believing it was affiliated with or endorsed by Nike, and that the consumer would not have purchased the StockX Vault NFT if they had known the Vault NFT was not affiliated with Nike, or that such a consumer would (or could) have instead purchased any of the same shoes associated with the Vault NFTs directly from Nike, would have instead purchased any of Nike’s NFT offerings, or would have instead purchased any Nike offerings whatsoever, had the consumer understood that the StockX Vault NFTs were not affiliated with Nike.

32. Moreover, while Nike alleges that it “has suffered, continues to suffer, and/or is likely to suffer damage to its trademarks, business reputation, and good will” as a result of consumer confusion, Nike has provided no meaningful evidence or justification for its claims.⁶⁶ Specifically, in its Amended Complaint Nike has alleged that StockX’s Vault NFTs have been subject to “public criticism” and “allegations that [they] are a scam.”⁶⁷ Nike’s justification for these claims appears to be two examples of such public criticism – a TikTok comment that calls the Vault NFTs “a stupid scam for Nike to make money” and an Input Magazine article that claims

guess] the companies are in on it”), ¶ 100 (“Are these NFTs endorsed/approved by Nike/Adidas etc?”). Another social media user questions whether Nike “gets a small commission every time an NFT is purchased” and how the availability of Vault NFTs “benefit[s] ... us the sneakerheads.” Amended Complaint, ¶ 102. Yet another social media post simply questions how StockX got “the licensing to sell NFTs with Nike branding.” Amended Complaint, ¶ 101. The remaining two social media posts suggest that users presume Nike gets compensated for the transactions involving Vault NFTs. Amended Complaint, ¶¶ 99, 103.

⁶⁵ Amended Complaint, ¶¶ 104-105; Houghton, B., “Nike Takes a Major Step into the Metaverse,” Zenger, May 2, 2022, available at <https://www.zenger.news/2022/05/02/nike-takes-a-major-step-into-the-metaverse/>, accessed March 30, 2023.

⁶⁶ Amended Complaint, ¶ 136.

⁶⁷ See, e.g., Amended Complaint, ¶¶ 8, 127, 135.

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“StockX’s ‘sneaker’ NFTs are kind of a scam hidden in plain sight.”⁶⁸ I note that the Input Magazine article makes no mention of Nike’s involvement with or endorsement of StockX’s Vault NFT offerings.⁶⁹ As such, it is unclear how the existence of such an article would necessarily, let alone meaningfully, harm Nike’s reputation or business. While Nike claims that StockX’s use of Nike’s trademarks in association with the Vault NFTs “has already generated negative associations with Nike in a way that harms Nike’s reputation and the immense goodwill that Nike has amassed in its brands,” the two anecdotal examples of public criticism quoted in the Amended Complaint do not constitute evidence that Vault NFTs have created any meaningful negative associations with the Nike trademarks for the relevant consumer population.⁷⁰

33. Similarly, Nike does not appear to have provided any evidence in support of its allegations of trademark dilution or injury to Nike’s business reputation. For example, despite its claims, Nike has not produced evidence, data, or analysis showing that the “distinctive quality” of Nike’s trademarks has been diluted and resulted in diminished capacity of Nike’s trademarks to serve as unique identifiers for Nike’s goods and services as a result of StockX’s alleged use of Nike’s trademarks in connection with the sale and promotion of the Vault NFTs.⁷¹ In fact, as discussed below, my review of select recent financial analyst reports covering Nike suggests that Nike’s brands and customer loyalty remain strong.⁷²

⁶⁸ Amended Complaint, ¶¶ 96, 103.

⁶⁹ See Servantes, I., “StockX’s ‘Sneaker’ NFTs Are Kind of a Scam Hidden in Plain Sight,” Input Magazine, January 19, 2022, available at <https://www.inverse.com/input/style/stockx-vault-nfts-sneakers-shoes-nike-off-white-dunk-adidas-bad-bunny>, accessed March 30, 2023.

⁷⁰ Amended Complaint, ¶ 8.

⁷¹ Amended Complaint, ¶¶ 129, 154.

⁷² See, e.g., Room to Run in Our NKEs; Initiating at Outperform with a \$145 Price Target, RBC Capital Markets, November 11, 2020, at p. 12 (“Social media mentions show consumers engaging with the brand

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34. Aside from these items in the Amended Complaint, Nike has not identified any basis for harm arising out of StockX’s Vault NFTs. Melanie Harris, Nike’s Vice President of Strategy and Development and its Rule 30(b)(6) witness [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷³ Finally, I note that Ms. Carpin, Nike’s Vice President of Brand Protection and IP enforcement and Rule 30(b)(6) witness o [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁴

even more during the COVID crisis.... We expect the increase in part speaks to growing customer affinity and loyalty to the brand during the crisis.”); SNEAKER WARS: NKE Dominating Web Data, Lowering Ests. Due to Macro Uncertainty, Jefferies, March 16, 2022, at p. 13 (“Supported by a growing appreciation for health and wellness and casual lifestyles, NKE’s business and brand are strengthening globally, and we expect that the company’s continued emphasis on digital should lead to share gains ahead.”); UBS Evidence Lab Inside: 4Q22 Preview: We Think the Stock Will Rise over Earnings; Buy, UBS Equities, June 15, 2022, at p. 1 (“We believe Nike has the brand strength, strategy, skills, and resources to outperform peers through a potential recession.”); Winning Mindset - Initiate at Outperform, RBC Capital Markets, September 22, 2022, at p. 51 (“Nike has structural competitive advantages which justify its #1 market share position but also underpin its growth potential in the future. This relates first to product, with the broadest and arguably strongest lifestyle footwear franchise line-up across Nike, Air Jordan and Converse brands.”). *See also*, Exhibit 4B.

⁷³

Harris Deposition, at pp. 224-230. *See, e.g.*, Harris Deposition, at p. 226 (“[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]), at pp. 227-228 (“[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷⁴

Carpini Deposition, at pp. 15-17, 20, 261.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**2. No evidence of material harm from trades of the allegedly counterfeit Nike products on the StockX platform or from StockX’s advertising**

35. As discussed above, in its Amended Complaint Nike also alleges that StockX sold allegedly counterfeit Nike products as genuine Nike products, “deceiving and misleading customers into believing consumers can blindly trust that all of the Nike shoes offered by StockX are genuine when they are not” and “causing immediate and irreparable injury to Nike, by injuring Nike’s reputation in the marketplace [and] diverting consumer purchases of genuine Nike goods.”⁷⁵ In particular, according to Nike’s Amended Complaint, StockX’s sale of counterfeit Nike products as authentic Nike products “caus[es] confusion, mistake, and deception among the general consuming public as to the quality of Nike’s authentic shoes” and thereby harms Nike’s reputation.⁷⁶

36. I have been informed that Nike’s allegations mischaracterize the nature of the transactions at issue, as none of the allegedly counterfeit shoes sold on StockX’s marketplace were sold directly by StockX; they were sold by and between third-parties via StockX’s platform, which is the ordinary way in which transactions occur on StockX’s marketplace.⁷⁷ Moreover, Nike has not cited or produced any evidence of lost sales or evidence suggesting there has been any change in consumer perception of the quality of Nike products resulting from any purchase of allegedly counterfeit Nike products from StockX anywhere in the world, let alone from sales on the StockX platform in particular, or from StockX’s advertising claims that Nike alleges to be false. Ms. Carpini, Nike’s Vice President of Brand Protection and IP enforcement and Rule 30(b)(6) witness

⁷⁵ Amended Complaint, ¶ 174.

⁷⁶ Amended Complaint, ¶ 168.

⁷⁷ “The Current Culture Marketplace,” StockX, available at <https://stockx.com/about/how-it-works/>, accessed April 28, 2023.

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on the topic of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁸ Specifically, Ms. Carpinis testified that [REDACTED]

[REDACTED]

[REDACTED]⁷⁹ Ms. Carpinis [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸⁰ Ms. Carpinis [REDACTED]

[REDACTED]

[REDACTED]

37. Ms. Carpinis also testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸¹ In fact, according to Ms. Carpinis,

Nike [REDACTED]

[REDACTED].⁸² According to Ms. Carpinis, [REDACTED]

⁷⁸ Carpinis Deposition, at pp. 15-17, 20, 261-262. *See also*, Carpinis Deposition, at pp. 242-243.

⁷⁹ Carpinis Deposition, at pp. 247-248.

⁸⁰ Carpinis Deposition, at pp. 261-262.

⁸¹ Carpinis Deposition, at p. 246.

⁸² Carpinis Deposition, at p. 240.

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38. Thus, to date, Nike [REDACTED]

[REDACTED] 83 [REDACTED]

D. Evidence Suggests That Nike Has Not Been Materially Harmed

1. Nike and StockX generally are not direct competitors

39. As noted above, Nike mainly engages in the *primary* sale of original Nike products to consumers (either through its stores or digital platform, or through authorized retailers). In contrast, StockX primarily provides a marketplace where consumers can engage in the *secondary* resale or purchase of items popular in current culture (e.g., limited-edition and/or collectible Nike sneakers).⁸⁴ That is, with very limited exceptions, StockX does not, itself, engage in the sale of products, but rather provides a platform for consumers to trade with each other.⁸⁵ StockX is one of many e-commerce platforms that provide a marketplace for buying and selling new and used products, including Nike-branded products. Nike does not, and has never, operated such a secondary marketplace.⁸⁶ As I discuss below, the record in this case and public evidence

⁸³ Carpini Deposition, at p. 262.

⁸⁴ See, e.g., Baylis, M. “The Buyer’s Guide: Nike Dunk,” StockX Magazine, February 18, 2021, available at <https://stockx.com/news/the-buyers-guide-nike-dunk/>, accessed May 3, 2023. See also, Huber Deposition, at p. 54 (“[O]ne of the founding goals of [StockX] was, we wanted to make it as easy to purchase, let’s say, a Nike sneaker as it is to purchase a share of Nike stock on the New York Stock Exchange: frictionless, simple.”); Griffith, E., “Buy Low-Tops, Sell High-Tops: StockX Sneaker Exchange Is Worth \$1 Billion,” The New York Times, June 26, 2019, available at <https://www.nytimes.com/2019/06/26/technology/trading-sneakers-stockx.html>, accessed May 1, 2023.

⁸⁵ See, e.g., STX0774309-336, at 315-316.

⁸⁶ [REDACTED]

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demonstrate that the parties are not direct competitors. Nike does not consider StockX a competitor, and StockX does not consider Nike a competitor.

a. Overview of secondary marketplace platforms

40. Two-sided e-commerce platforms such as StockX typically match buyers and sellers of various products, facilitate trades, and make revenue from fees for using the platforms’ services. Platforms may differ in terms of products that are allowed to be traded on each platform (e.g., new goods only versus new and used goods) and how they operate (e.g., product may be shipped directly from seller to buyer versus through the platform). Although platforms may differ in the degree to which they inspect products being sold by sellers on their platforms and in the

[REDACTED] Deposition of Ron Faris, December 7, 2022 (“Faris Deposition”), at p. 194 (“[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”), at pp. 200-201 (testifying that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. See also, Carpini Deposition, at p. 229 (“[REDACTED]
[REDACTED]”), at p. 244 (“[REDACTED]”); Griffith, E., “Buy Low-Tops, Sell High-Tops: StockX Sneaker Exchange Is Worth \$1 Billion,” The New York Times, June 26, 2019, available at <https://www.nytimes.com/2019/06/26/technology/trading-sneakers-stockx.html>, accessed May 1, 2023 (“For sneaker brands like Nike and Adidas, sites like StockX add a twist to the ecosystem around their most desired shoes So far, the companies have taken a hands-off stance to the online marketplaces, with Nike’s chief financial officer saying in March that the company was not focused on reselling and had no partnership plans or business strategy for it.”); “Nike’s Executive Saga Exposes Uneasy Relationship with Resellers,” Digital Commerce 360, March 3, 2021, available at <https://www.digitalcommerce360.com/2021/03/03/nikes-executive-saga-exposes-uneasy-relationship-with-resellers/>, accessed May 1, 2023 (“I don’t think we’re really fixated or focused on trying to capture that secondary market,’ Mark Parker, Nike’s then-chief executive officer, said on Bloomberg TV in 2014. ‘Are there some things we could do to take advantage of that? Possibly. We’re looking at that, but that really hasn’t been our fixation or focus.’ True to his word, Parker stayed away from resale through his tenure, which ended last year. That hasn’t changed under his successor, John Donahoe.”).

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ways in which they describe those processes to consumers, many of the secondary marketplaces that compete with StockX make claims to consumers about whether products sold on their platform are inspected to determine if they are authentic or not, as discussed in more detail below.

41. StockX, as noted previously, is an online marketplace that connects buyers and sellers of limited-edition, high-demand consumer products, such as rare sneakers, streetwear, handbags, watches and other collectibles from a wide range of high-end brands.⁸⁷ StockX only allows trades of brand new, never-been-worn items, whose sale prices are determined when a buyer’s bid matches a seller’s ask.⁸⁸ The products that are traded on StockX are often sold out at retail and cannot be purchased directly from the manufacturer.⁸⁹ Once the sale takes place, the product is shipped to StockX for verification before being shipped by StockX to the buyer.⁹⁰ As stated above, StockX charges transaction, shipping, and other fees to the buyers and sellers that use the platform to trade products.⁹¹

42. Similar to StockX, GOAT (short for “greatest of all time”) is an e-commerce platform that originally launched in 2015 to operate as a resale platform for sneakers and has since

⁸⁷ STX0021868-951, at 929; “Luxury Brands,” StockX, available at <https://stockx.com/luxury-brands/recent-bids>, accessed April 28, 2023.

⁸⁸ STX0021868-951, at 929 (“StockX provides complete visibility into all previous prices the items have sold for, letting buyers confidently decide the price they’re willing to pay, and sellers set the price at which they’re willing to sell. Once these are matched up, the item is sent on to StockX for final authentication and quality assurance before being shipped to the buyer.”); “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

⁸⁹ See, e.g., Deng, V., “Resale for the Tiffany & Co. x Nike Air Force 1 Is Double Its Retail Price,” Footwear News, March 8, 2023, available at <https://footwearnews.com/2023/fashion/sneakers/tiffany-co-nike-air-force-1-resale-info-1203426402/>, accessed May 3, 2023.

⁹⁰ STX0021868-951, at 929.

⁹¹ See STX0774309-336, at 316; Huber Deposition, at p. 41 (“So components of our revenue would include selling fees, buying fees, seller shipping, buyer shipping, seller penalty fees, inventory sales, and … any other revenue-generating activity that StockX engages in.”).

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expanded to sell new and used luxury apparel and accessories.^{92,93} As of July 2021, GOAT had 30 million members and 600,000 sellers.⁹⁴ Sellers set prices when listing products on GOAT, similar to how sellers set asking prices on StockX, and buyers can pay the list price or make offers to sellers.⁹⁵ All products sold on GOAT are sent from sellers to GOAT’s authentication centers, where they are inspected by GOAT’s in-house team, who in part rely on artificial intelligence to investigate potential counterfeits.⁹⁶ GOAT offers an “Assurance of Authenticity” to its customers, wherein buyers can report an issue with their order within three days after receipt of the item, and receive a full refund if their items are deemed inauthentic or not as described.⁹⁷ GOAT earns a commission on each product sold, and this fee varies based on the seller’s history of delivering authentic products.⁹⁸

⁹² White, R., “How Fake Air Jordans Turned These L.A. Pals’ Sneakerhead Dream into a Powerhouse Platform,” Los Angeles Times, July 16, 2021, available at <https://www.latimes.com/business/story/2021-07-16/goat-group-sneaker-empire-funding-expansion-plans>, accessed May 3, 2023.

⁹³ I understand that GOAT is part of the GOAT Group, a conglomerate of resell companies, that also includes Flight Club, a chain of physical sneaker consignment stores, and alias, an app-based platform that allows sellers of sneakers, apparel and accessories of GOAT and Flight Club to track sales and pricing data. “GOAT Group to Acquire Grailed,” PR Newswire, October 17, 2022, available at <https://www.prnewswire.com/news-releases/goat-group-to-acquire-grailed-301650425.html>, accessed May 3, 2023; “FAQ,” alias, January 10, 2023, available at <https://www.alias.org/faq>, accessed May 3, 2023; White, R., “How Fake Air Jordans Turned These L.A. Pals’ Sneakerhead Dream into a Powerhouse Platform,” Los Angeles Times, July 16, 2021, available at <https://www.latimes.com/business/story/2021-07-16/goat-group-sneaker-empire-funding-expansion-plans>, accessed May 3, 2023.

⁹⁴ White, R., “How Fake Air Jordans Turned These L.A. Pals’ Sneakerhead Dream into a Powerhouse Platform,” Los Angeles Times, July 16, 2021, available at <https://www.latimes.com/business/story/2021-07-16/goat-group-sneaker-empire-funding-expansion-plans>, accessed May 3, 2023.

⁹⁵ “Selling on GOAT,” GOAT, available at <https://www.goat.com/selling>, accessed May 3, 2023; “How Do I Place an Order?” GOAT Support, available at <https://support.goat.com/hc/en-us/articles/360023485932-How-do-I-place-an-order->, accessed May 3, 2023.

⁹⁶ White, R., “How Fake Air Jordans Turned These L.A. Pals’ Sneakerhead Dream into a Powerhouse Platform,” Los Angeles Times, July 16, 2021, available at <https://www.latimes.com/business/story/2021-07-16/goat-group-sneaker-empire-funding-expansion-plans>, accessed May 3, 2023.

⁹⁷ See STX0805898; STX0805899; “Buyer Protection Policy,” GOAT, <https://www.goat.com/buyer-protection-guarantee>, accessed May 5, 2023.

⁹⁸ Commission fees range from 9.5 percent of the listing price to 25 percent of the listing price and vary based on the seller’s history of confirming orders and shipping authentic items. GOAT also charges a fixed “seller fee” for each sale, based on the seller’s country of origin. In the United States, the seller fee is \$5 per order. “Fee Policy,” GOAT, April 4, 2023, available at <https://www.goat.com/fees>, accessed May 3, 2023.

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43. In 2022, GOAT acquired Grailed, one of the leading secondary marketplaces for men’s luxury, streetwear, and vintage fashion.⁹⁹ Like StockX, Grailed is a community-driven online marketplace that connects buyers and sellers.¹⁰⁰ Sellers set prices when listing products on Grailed, and the platform allows both buyers and sellers to make offers to each other.¹⁰¹ Grailed offers a digital inspection process for “high-risk” items sold on the platform, where expert authenticators review photographs of an item uploaded by sellers before that item is listed on the site to determine whether the product is approved to be sold on Grailed’s platform.¹⁰²

44. In addition to GOAT and Grailed, several other secondary resale platforms focused on sneakers exist that conduct inspections for authenticity of the products sold on their platforms. For example, the Flight Club is “a ship-to-verify and consignment marketplace” that verifies all shoes through an inspection process, and claims its inventory to be “guaranteed authentic.”¹⁰³ Stadium Goods is a secondary marketplace that uses a 10-point verification system to verify its products, and claims every item is “guaranteed authentic” and offers “100% Authentic[ity]

⁹⁹ “GOAT Group to Acquire Grailed,” PR Newswire, October 17, 2022, available at <https://www.prnewswire.com/news-releases/goat-group-to-acquire-grailed-301650425.html>, accessed May 3, 2023.

¹⁰⁰ See “How Do I Sell an Item?” Grailed, available at <https://help.grailed.com/hc/en-us/articles/115003612454-How-do-I-sell-an-item-60046707673>, accessed May 3, 2023.

¹⁰¹ “How Do Offers Work?” Grailed, available at <https://help.grailed.com/hc/en-us/articles/360046707673>, accessed May 3, 2023; “Introducing: Seller Initiated Offers,” Grailed, March 2022, available at <https://help.grailed.com/hc/en-us/articles/4461750462107-Introducing-Seller-Initiated-Offers>, accessed May 3, 2023; “How Do I Sell an Item?” Grailed, available at <https://help.grailed.com/hc/en-us/articles/115003612454-How-do-I-sell-an-item-60046707673>, accessed May 3, 2023.

¹⁰² Grailed determines what products are “high-risk” based on a variety of factors including how susceptible the brand/style is to counterfeiting, how valuable an item is, the listing price relative to the item’s original price, and the account history of the seller. “Authentication,” Grailed, available at <https://www.grailed.com/trust/authentication>, accessed May 3, 2023. Authenticated items receive a check mark next to the word “Authenticated” and the language “This item has been authenticated by our in-house team or a trusted partner.”

¹⁰³ STX0805882 (“All shoes are authenticated and verified to be as described by our team of trained specialists.”); STX0805880.

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Guaranteed.”¹⁰⁴ RIF is a Los Angeles-based sneaker and clothing marketplace whose team of “experienced and highly trained” staff inspect “every item” for authenticity.¹⁰⁵ RIF claims to sell “100% Authentic Sneakers,”¹⁰⁶ and states that shoes on its platform are “100% Authentic, Guaranteed.”¹⁰⁷ Similarly, Sole Supremacy is a sneaker marketplace that inspects all shoes offered for sale on its platform and “guarantee[s]” “[a]ll shoes” sold to be “100% authentic.”¹⁰⁸ Project Blitz is another store that sells rare and limited-edition sneakers and streetwear, and promises every item sold to be “100% authentic.”¹⁰⁹ Likewise, Index, a sneaker consignment store based in Portland, OR, guarantees that “all shoes are authentic.”¹¹⁰

45. Another marketplace that, like StockX, allows consumers to resell fashion goods is Depop. Founded in 2011 and acquired by Etsy in 2021, Depop is a community-based marketplace for unique, used and vintage clothing items and accessories, including designer goods.¹¹¹ As of December 2021, Depop had 26 million registered users.¹¹² Depop is a two-sided marketplace, where sellers list clothes for buyers, and sellers and buyers interact in a social-media type environment.¹¹³ Sellers on Depop set prices when listing items for sale and buyers are able to make

¹⁰⁴ STX0805884; STX0805883.

¹⁰⁵ STX0805889.

¹⁰⁶ STX0805887; STX0805888.

¹⁰⁷ STX0805889.

¹⁰⁸ STX0805890. *See also*, STX0805891.

¹⁰⁹ STX0805892. *See also*, STX0805894.

¹¹⁰ STX0805896; “Our Store,” Index, available at <https://www.indexpdx.com/our-store/>, accessed May 3, 2023.

¹¹¹ Etsy Inc., Form 10-K for the Fiscal Year Ended December 31, 2021, (“Etsy 2021 10-K”), at pp. 5, 52; “How to Sell Clothes on Depop: Everything You Need to Know to Start Selling,” Depop, available at <https://blog.depop.com/articles/how-to-sell-clothes-on-depop-everything-you-need-t>, accessed May 3, 2023.

¹¹² Etsy 2021 10-K, at p. 5.

¹¹³ “How to Sell Clothes on Depop: Everything You Need to Know to Start Selling,” Depop, available at <https://blog.depop.com/articles/how-to-sell-clothes-on-depop-everything-you-need-t>, accessed May 3, 2023.

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offers on listed items.¹¹⁴ Buying and selling happens within the platform and Depop sellers ship items directly to buyers once the purchase is made.¹¹⁵ Any registered Depop user is able to buy and sell items using the platform in exchange for a commission.¹¹⁶

46. In addition, there are several marketplaces that specialize in the secondary sale of luxury goods. For example, the RealReal is the world’s largest online marketplace for reselling luxury goods.¹¹⁷ The RealReal primarily facilitates sales of pre-owned women’s and men’s fashion items, jewelry, and watches from luxury designers.¹¹⁸ The “substantial majority” of the RealReal’s revenue is generated through consignment sales (*i.e.*, sales where the RealReal sells products on behalf of consigners and retains a percentage of the sale revenue as compensation).¹¹⁹ All products sold on the RealReal are inspected to determine whether it believes them to be authentic.¹²⁰ The RealReal allows anyone who owns products from a specified set of luxury brands to submit products for inspection.¹²¹ Sellers send luxury goods to the RealReal, where they “pass through a rigorous brand-specific authentication process before they are accepted for consignment.”¹²²

¹¹⁴ “How to Sell Clothes on Depop: Everything You Need to Know to Start Selling,” Depop, available at <https://blog.depop.com/articles/how-to-sell-clothes-on-depop-everything-you-need-t>, accessed May 3, 2023.

¹¹⁵ “How to Sell Clothes on Depop: Everything You Need to Know to Start Selling,” Depop, available at <https://blog.depop.com/articles/how-to-sell-clothes-on-depop-everything-you-need-t>, accessed May 3, 2023.

¹¹⁶ “How to Sell Clothes on Depop: Everything You Need to Know to Start Selling,” Depop, available at <https://blog.depop.com/articles/how-to-sell-clothes-on-depop-everything-you-need-t>, accessed May 3, 2023.

¹¹⁷ The RealReal, Inc., Form 10-K for the Fiscal Year Ended December 31, 2022 (“The RealReal 2022 10-K”), at pp. 5-6.

¹¹⁸ The RealReal 2022 10-K, at p. 5.

¹¹⁹ The RealReal also generates revenue from sales of products it owns and sells to customers, as well as revenue from shipping fees for shipping products to buyers. The RealReal 2022 10-K, at p. 33.

¹²⁰ “Consignment/Sales Agreement,” The RealReal, available at https://www.therealreal.com/consignor_terms, accessed May 3, 2023.

¹²¹ “Sell With Us,” The RealReal, available at <https://www.therealreal.com/sell-trr>, accessed May 3, 2023; “Consignment/Sales Agreement,” The RealReal, available at https://www.therealreal.com/consignor_terms, accessed May 3, 2023.

¹²² The RealReal 2022 10-K, at pp. 6-7.

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Unlike other secondary marketplaces where sellers list the items and set prices for these items (e.g., StockX), once the RealReal accepts products for consignment, the RealReal sets the prices for these products and performs the listing, selling, and fulfillment logistics on behalf of sellers.¹²³

47. Finally, global online marketplaces such as Amazon and eBay also facilitate trades between millions of sellers and buyers. Amazon is the world’s largest retailer outside of China.¹²⁴ Products sold to consumers on Amazon include third-party goods that Amazon purchases to resell, as well as products listed by third-party sellers that use Amazon as a sales platform.¹²⁵ Like some of the other marketplaces described in this section, Amazon allows anyone to list and sell products, provided they purchase a selling plan.¹²⁶ Amazon allows third-party sellers to list a wide variety of goods, including hand and custom-made goods, independently produced media content, pre-owned goods, and branded goods.¹²⁷

48. Amazon has one listing for all sellers of the same product, and allows sellers to offer different prices to buyers.¹²⁸ Customers purchase goods on Amazon (including those sold by

¹²³ The RealReal 2022 10-K, at pp. 6-7.

¹²⁴ Amazon.com, Inc. Form 10-K for the Fiscal Year Ended December 31, 2022 (“Amazon 2022 10-K”), at pp. 3, 19; Weise, K., and M. Corkey, “People Now Spend More at Amazon Than at Walmart,” The New York Times, August 17, 2021, available at <https://www.nytimes.com/2021/08/17/technology/amazon-walmart.html>, accessed May 2, 2023.

¹²⁵ Amazon 2022 10-K, at p. 3. *See also*, Quaker, D., “Product Ideas in 2023: How to Tap the Amazon Best Sellers List,” Amazon, December 27, 2022, available at <https://sell.amazon.com/blog/product-ideas>, accessed May 2, 2023.

¹²⁶ “The Beginner’s Guide to Selling on Amazon,” Amazon, available at <https://sell.amazon.com/beginners-guide>, accessed May 2, 2023.

¹²⁷ Amazon 2022 10-K, at p. 41; Quaker, D., “Product Ideas in 2023: How to Tap the Amazon Best Sellers List,” Amazon December 27, 2022, available at <https://sell.amazon.com/blog/product-ideas>, accessed May 2, 2023.

¹²⁸ “The Beginner’s Guide to Selling on Amazon,” Amazon, available at <https://sell.amazon.com/beginners-guide>, accessed May 2, 2023.

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third parties) by paying the list price and using Amazon’s typical checkout and payment process.¹²⁹

Amazon offers two methods for third party sellers to deliver goods to buyers.¹³⁰ First, sellers can ship products to Amazon fulfillment centers before they are sold, and after goods are sold, they are packed, and shipped by Amazon, similar to how orders are fulfilled on platforms like the RealReal. Second, sellers may choose to store their own goods and ship them directly to consumers, similar to how orders are fulfilled on platforms like Depop.¹³¹

49. eBay is the leading global third-party online marketplace with 134 million buyers in 190 markets as of 2022.¹³² eBay is a two-sided marketplace that facilitates trades between buyers and sellers.¹³³ Unlike other platforms that only allow sales of a small set of select types of goods (e.g., StockX), eBay allows sellers to list a variety of new and used products in individual listings.¹³⁴ Buyers can purchase products on eBay by bidding in time-limited auctions, paying minimum ‘buy it now’ prices set by sellers, or making offers to sellers.¹³⁵ Beginning in 2020, eBay began offering an “Authenticity Guarantee” – a service through which eBay will inspect watches, sneakers, and other luxury and collectible items that third-party sellers wish to sell to ensure that

¹²⁹ “The Beginner’s Guide to Selling on Amazon,” Amazon, available at <https://sell.amazon.com/beginners-guide>, accessed May 2, 2022. *See also*, “Ordering from a Third-Party Seller,” Amazon, available at <https://www.amazon.com/gp/help/customer/display.html?nodeId=GEF528GN65XSJ7V8>, accessed May 2, 2023.

¹³⁰ I understand that most goods can be shipped using either fulfillment method. Some goods, such as customized items, are shipped by the seller because they are made after the purchase. *See, e.g.*, “Amazon Custom,” Amazon, available at <https://sell.amazon.com/programs/custom>, accessed May 2, 2023.

¹³¹ Quaker, D., “Product Ideas in 2023: How to Tap the Amazon Best Sellers List,” Amazon December 27, 2022, available at <https://sell.amazon.com/blog/product-ideas>, accessed May 2, 2023.

¹³² eBay, Inc. Form 10-K for the Fiscal Year Ended December 31, 2022 (“eBay 2022 10-K”), at p. 4.

¹³³ eBay 2022 10-K, at p. 4.

¹³⁴ eBay 2022 10-K, at p. 6; “Creating a Listing,” eBay Customer Service, available at <https://www.ebay.com/help/selling/listings/creating-listing?id=4105>, accessed May 2, 2023.

¹³⁵ “How Buying Works on eBay,” eBay Customer Service, available at <https://www.ebay.com/help/buying/buy-now/buying-works?id=4002>, accessed April 28, 2023.

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eBay considers the items to be authentic.¹³⁶ Products covered under eBay’s “Authenticity Guarantee” service are shipped by sellers to authentication centers, where eBay’s experts inspect each product and confirm the condition matches the listing and that the product appears to be authentic before shipping the product to the buyer.¹³⁷ eBay earns revenue through fees collected on sales, including payment processing and promoted listing advertising.¹³⁸

b. Sales of Nike products on the StockX platform are highly unlikely to divert sales from Nike

50. Consumers who purchase Nike products from third-party sellers on StockX and other secondary marketplace platforms ordinarily do not have the ability to buy those same products directly from Nike. This is because many of StockX’s buyers are collectors of sneakers—so called “sneakerheads”—who are “highly discriminating and very selective” and are often interested in purchasing only limited-edition items that are no longer available, or “sold out,” at

¹³⁶ “eBay Launches Authentication on All Watches Sold for \$2,000 or More in the US with New Service, ‘Authenticity Guarantee’,” PR Newswire, September 8, 2020, available at <https://www.prnewswire.com/news-releases/ebay-launches-authentication-on-all-watches-sold-for-2-000-or-more-in-the-us-with-new-service-authenticity-guarantee-301125281.html>, accessed May 3, 2022; eBay’s authentication program covers all watches sold for more than \$2,000, certain types and brands of jewelry sold for more than \$500, certain brands of trading cards sold for more than \$250, certain brands of handbags sold for more than \$500, and “select in-demand” models of sneakers in new or used condition from certain brands, including Nike and Jordan. “eBay Authenticity Guarantee,” eBay Customer Service, available at <https://www.ebay.com/help/selling/selling-tools/ebay-authenticity-guarantee?id=4644>, accessed May 2, 2023.

¹³⁷ “eBay Authenticity Guarantee,” eBay Customer Service, available at <https://www.ebay.com/help/selling/selling-tools/ebay-authenticity-guarantee?id=4644>, accessed May 2, 2023.

¹³⁸ eBay 2022 10-K, at pp. 4-5.

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retail.¹³⁹ Based on StockX’s market research, consumers view StockX as a platform for resale of “rare items” for “serious collectors.”¹⁴⁰

51. Although Nike manufactures a wide range of products for a variety of customers, the company regularly releases limited-edition sneakers that get “sold out instantly upon release.”¹⁴¹ Nike maintains a public calendar of these limited-edition releases.¹⁴² Purchasing such sneakers directly from Nike’s stores or its authorized retailers would be difficult, if not impossible, after their initial release. For example, on March 7, 2023, Nike released the limited-edition Tiffany Co. x Nike Air Force 1 1837 sneakers, which retailed for \$400.¹⁴³ These sneakers sold out instantly after release and many customers were unable to purchase these products in the primary marketplace.¹⁴⁴ By March 8, 2023, the day after the release, pairs of these sneakers were listed on StockX for asking prices up to \$2,149.¹⁴⁵ As of April 7, 2023, a month after the release, 5,419 pairs

¹³⁹ STX0021868-951, at 873-874; Deng, V., “Resale for the Tiffany & Co. x Nike Air Force 1 Is Double Its Retail Price,” Footwear News, March 8, 2023, available at <https://footwearnews.com/2023/fashion/sneakers/tiffany-co-nike-air-force-1-resale-info-1203426402/>, accessed May 3, 2023.

¹⁴⁰ STX0021868-951, at 873, 929.

¹⁴¹ Huber Deposition, at p. 18.

¹⁴² See “Upcoming Products,” Nike, available at <https://www.nike.com/launch?s=upcoming>, accessed May 3, 2023.

¹⁴³ Malachosky, E., “Nike and Tiffany’s Sneaker Collab: Everything You Should Know,” Gear Patrol, March 8, 2023, available at <https://www.gearpatrol.com/style/shoes-boots/a42720199/nike-tiffany-air-force-1/>, accessed May 2, 2023.

¹⁴⁴ Deng, V., “Resale for the Tiffany & Co. x Nike Air Force 1 Is Double Its Retail Price,” Footwear News, March 8, 2023, available at <https://footwearnews.com/2023/fashion/sneakers/tiffany-co-nike-air-force-1-resale-info-1203426402/>, accessed May 3, 2023; “Tiffany & Co. X Nike Air Force 1 1837 Shoebox,” Uncrate, available at <https://uncrate.com/tiffany-co-x-nike-air-force-1-1837-shoebox/>, accessed May 3, 2023. See also, Mazariego, O., “The Tiffany Co. x Nike Air Force 1 Drop Leaves Sneakerheads in Tears,” Hip Hop Wired, March 7, 2023, available at <https://hiphopwired.com/playlist/the-tiffany-co-x-nike-air-force-1-drop-leaves-sneakerheads-in-tears/item/2>, accessed May 2, 2023 (“Today (March 7), the highly anticipated drop of the Tiffany Co. x Nike Air Force 1 went down and with an estimated count of only 20,000 pairs available.... [n]aturally many assume that sneaker bots ate the drop ... from the raffle that Tiffany held over the weekend ... today though it was basically a 1000 to 1 ratio[] of losers to winners.”).

¹⁴⁵ Deng, V., “Resale for the Tiffany & Co. x Nike Air Force 1 Is Double Its Retail Price,” Footwear News, March 8, 2023, available at <https://footwearnews.com/2023/fashion/sneakers/tiffany-co-nike-air-force-1-resale-info-1203426402/>, accessed May 3, 2023.

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of Tiffany Co. x Nike Air Force 1 1837 sneakers had sold on StockX, for an average 236 percent premium over the original selling price.¹⁴⁶ Similarly, the lowest price offered for each size of the sneakers on GOAT ranged from \$935 to \$2,826.¹⁴⁷ Basic economics suggests that consumers would be willing to pay such a significant price premium over the actual retail price only if they are unable to buy these limited release items from Nike or its authorized distributors.¹⁴⁸

52. In fact, as discussed below, manufacturers like Nike may intentionally limit their production of such highly coveted sneakers to make them scarce.¹⁴⁹ For customers that are willing

resale-info-1203426402/, accessed May 3, 2023. Note that because StockX connects buyers and sellers of sneakers worldwide, one may occasionally be able to purchase a pair of limited-edition Nike sneakers on StockX even prior to its release at retail. This is either because Nike has made the product available to a given set of consumers earlier (e.g., released products at different times in different geographies, released products through an exclusive platform such as an app, or the individual has won the right to purchase products at an earlier date from a Nike lottery) or Nike has gifted product to project collaborators (e.g., athletes, designers, and musicians) and their friends and family, Nike insiders, or influencers. *See, e.g.*, Silva, A., “Tiffany x Nike Air Force 1 1837: Sneaker Release Date, Price, Where to Buy,” DraftKings Nation, March 6, 2023, available at <https://dknation.draftkings.com/23627244/tiffany-nike-air-force-1-1837-new-york-city-legendary-pair-sneaker-release-date-price-where-to-buy>, accessed May 3, 2023; Vanderweide, Z., “Everything You Need to Know About Sneaker Samples,” Sotheby’s, May 19, 2022, available at <https://www.sothebys.com/en/articles/everything-you-need-to-know-about-sneaker-samples>, accessed May 3, 2023; Klerks, F., “All Nike Air Max 1 & 90 Hyperstrikes and Friends & Family Releases,” Outsole, April 23, 2021, available at <https://www.outsole.nl/blog/all-nike-air-max-1-90-hyperstrikes-and-friends-family-releases-in-one-overview/>, accessed May 3, 2023; Dickey, M. R., “Nike Teamed up with Snap and Darkstore to Pre-Release Air Jordan III ‘Tinker’ Shoes on Snapchat,” TechCrunch, February 19, 2018, available at <https://techcrunch.com/2018/02/19/nike-teamed-up-with-snap-and-darkstore-to-pre-release-air-jordan-iii-tinker-shoes-on-snapchat/>, accessed May 3, 2023; “Air Jordan 1 High OG Lost & Found to Release in China First,” Kicks on Fire, November 2, 2022, available at <https://www.kicksonfire.com/air-jordan-1-high-og-lost-and-found/>, accessed April 28, 2023.

¹⁴⁶ “Nike Air Force 1 Low Tiffany & Co. 1837,” StockX, available at <https://stockx.com/nike-air-force-1-low-sp-tiffany-and-co>, accessed April 7, 2023.

¹⁴⁷ “Tiffany & Co. x Air Force 1 Low ‘1837’,” GOAT, available at <https://www.goat.com/sneakers/tiffany-co-x-air-force-1-low-1837-dz1382-001>, accessed April 14, 2023.

¹⁴⁸ *See, e.g.*, Vanderweide, Z., “Everything You Need to Know About Sneaker Samples,” Sotheby’s, May 19, 2022, available at <https://www.sothebys.com/en/articles/everything-you-need-to-know-about-sneaker-samples>, accessed May 3, 2023; Hunt, J., “Sneakerheads Have Turned Jordans and Yeezys into a Bona Fide Asset Class,” Bloomberg, February 25, 2021, available at <https://www.bloomberg.com/features/2021-sneaker-investment/>, accessed April 27, 2023.

¹⁴⁹ *See, e.g.*, Bain, M., “Nike has Carefully Positioned the Dunk to be 2021’s Hottest Sneaker,” Quartz, March 12, 2021, available at <https://qz.com/1971858/nikes-dunk-was-carefully-positioned-to-be-2021s-hottest-sneaker>, accessed May 1, 2023 (“The drop model, a steady drip of hyped shoes made available in small quantities, has become central to Nike’s distribution strategy.”); “[Nike’s] methodology has been over the

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to purchase such limited-edition sneakers, shoes that *are* commonly available at Nike retail stores or authorized retailers that are mass-produced models are unlikely to be appropriate substitutes.¹⁵⁰

As such, customers who want to buy limited-edition sneakers would likely look towards the “aftermarket,” including StockX, to obtain the pair of interest.¹⁵¹ As one article explained, “the secondary footwear market acts as an indicator [regarding how] popular [a] particular series might be . . . , as they would only enter the secondary footwear market if they were sold out in the primary

years to increase the quantity available every year by a small amount, say 10%. They could at any point have come out with 50% more product and blown up. But they would have had a real difficult time the next year offsetting that. By only increasing the quantity by 10%, the shoe sells out and that brings the kids back in the next Saturday for the next release.”); Leach, A., “The Ingenious Methods Nike Uses to Control the Sneaker Resell Market,” HighSnobiety, available at <https://www.hightsnobiety.com/p/sneaker-resell-market/>, accessed May 1, 2023 (“Put simply, by expertly balancing limited supply and heightened demand Nike can have its cake and eat it. . . . By ensuring supply never quite meets demand, Nike . . . cultivat[es] the sort of rabid following that keeps the Swoosh at the forefront of consumer culture - right up there with Apple and Starbucks. Not to mention allowing the brand to sell millions of 20-year-old sneakers a year without advertising, PR, discounts or sales.”); Pang, K., “StockX – Trading Exchange for Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submission/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023 (“Manufacturers such as Adidas intentionally limit production runs to create hype about their sneaker design.”).

¹⁵⁰ As an example, consider Nike “Dunk” sneakers, which, as of May 3, 2023, were available in certain models or colorways on Nike’s website for a maximum price of \$165. However, at the same time, certain other limited-edition or scarce models of the Dunk sneakers listed on StockX, and no longer available from Nike directly, command much higher prices. For example, the Nike SB Dunk Low Ben & Jerry’s Chunky Dunky sneakers, which last sold for \$1,300, or the Nike SB Dunk Low Grateful Dead Bears Opti Yellow sneakers, which last sold for \$800. If consumers considered the Dunks available from Nike reasonable substitutes to the Nike SB Dunk Low Ben & Jerry’s Chunky Dunky or the Nike SB Dunk Low Grateful Dead Bears Opti Yellow, they would have purchased the Dunk shoes from Nike. However, the fact that 684 of the Nike SB Dunk Low Ben & Jerry’s Chunky Dunky sneakers and 481 pairs of the Nike SB Dunk Low Grateful Dead Bears Opti Yellow sneakers sold on StockX in the past 12 months as of May 3, 2023, suggests that consumers do not consider the Nike Dunks currently available from Nike reasonable substitutes to these more expensive pairs that are no longer available directly from Nike. See “Nike Dunk Shoes,” Nike, available at <https://www.nike.com/w/dunk-shoes-90aoohzy7ok?sort=priceDesc>, accessed May 3, 2023; Baylis, M., “The Buyer’s Guide: Nike Dunk,” StockX Magazine, February 18, 2021, available at <https://stockx.com/news/the-buyers-guide-nike-dunk/>, accessed May 3, 2023; “Nike SB Dunk Low Ben & Jerry’s Chunky Dunky,” StockX, available at <https://stockx.com/nike-sb-dunk-low-ben-jerrys-chunky-dunk>, accessed May 3, 2023; “Nike SB Dunk Low Grateful Dead Bears Opti Yellow,” StockX, available at <https://stockx.com/nike-sb-dunk-low-grateful-dead-bears-yellow>, accessed May 3, 2023.

¹⁵¹ “Nike,” HighSnobiety, available at <https://www.hightsnobiety.com/tag/nike/>, accessed April 13, 2023.

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market.”¹⁵² As a result, the sale of Nike products through the StockX platform is unlikely to cause sales to be diverted from Nike.

53. Consistent with the above, StockX’s internal documents suggest that StockX views as its core competitors e-commerce marketplaces such as eBay, the RealReal, GOAT, Grailed, and Depop, which I described above.¹⁵³ In contrast, Nike’s Rule 30(b)(6) witness on the topic of what harm Nike suffered related to its counterfeiting and false advertising causes of action, testified that Nike’s core competitors are “Adidas, Puma, Under Armour[] [and] a number of sporting good[s] companies out there.”¹⁵⁴ As stated above, Nike sells merchandise directly to consumers through its retail stores and digital platform, as well as sells wholesale merchandise to its authorized distributors that sell Nike products to consumers.¹⁵⁵ Nike generally does not engage in the resale of Nike-branded products, and does not view those engaged in the resale of Nike-branded products as its main competitors.¹⁵⁶ Consistent with Nike’s Rule 30(b)(6) witness’s testimony, Nike’s filings

¹⁵² “Nike – A Secondary Market Analysis,” Seeking Alpha, October 19, 2017, available at <https://seekingalpha.com/article/4114636-nike-secondary-market-analysis>, accessed May 4, 2023 (“[Secondary marketplace] is a marketplace for people to resell limited edition or hyped sneakers at a profit. Hence, sneakers that are sold on these secondary footwear markets such as StockX and eBay are sold out in retail/online stores. For example, as a pair for Jordan Retro series drops on a Saturday morning, ‘Sneakerheads’ or resellers will line up outside your local footwear store such as Footlocker to make the purchase, to either add it to their collection or resell it in the secondary market for a profit. Hence, knowing the change in trends within the secondary market shows whether particular models are continuing to sell out in the primary market.”).

¹⁵³ STX0021868-951, at 903. *See also*, STX0021868-951, at 872-873.

¹⁵⁴ Carpin Deposition, at p. 244.

¹⁵⁵ In 2022, sales to authorized distributors accounted for 58 percent of Nike’s revenue, while direct sales to consumers accounted for 42 percent of Nike’s revenue. Nike 2022 10-K, at p. 33.

¹⁵⁶ Carpin Deposition, at p. 244. *See also*, SNEAKER WARS: NKE Dominating Web Data, Lowering Ests. Due to Macro Uncertainty, Jefferies, March 16, 2022 (“Nike doesn’t directly compete with StockX.”). Note that in 2021, Nike launched “Nike Refurbished” program, “which takes returns for gently worn, like-new or imperfect footwear, and refurbishes and cleans them to be resold at Nike stores at a discount.” The Nike Refurbished program only includes shoes that were purchased from Nike and subsequently returned to Nike, and Nike does not purchase or accept donations of used shoes to sell in the program. Salpini, C., “Nike Launches Refurbishment Program in 15 Stores,” RetailDive, April 12, 2021, available at <https://www.retaildive.com/news/nike-launches-refurbishment-program-in-15-stores/598216/>, accessed

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with the Securities and Exchange Commission (SEC) indicate that Nike primarily competes against leading sportswear manufacturers like adidas, Puma, and Under Armour.¹⁵⁷ Nike’s SEC filings do not identify StockX, GOAT, or any other secondary marketplace platform as a direct competitor.¹⁵⁸

2. There is no evidence of diverted sales or other material harm to Nike

54. Nike has not produced its sales or pricing data that would allow for a quantitative analysis of potential financial harm. As discussed above, it is my understanding that Nike does not consider its sales or pricing data to be relevant in this litigation and does not intend to rely on such information to establish that it has suffered actual harm due to StockX’s conduct. This absence of evidence from Nike notwithstanding, because Nike is a public company and makes information about its financial condition and material risks facing its business public, I have reviewed publicly available Nike communications with investors and analyst reports covering the company in order to determine whether there is any evidence which suggests that Nike has been harmed by StockX’s activities.¹⁵⁹ Based on that review, I have found no evidence of any impact of StockX’s alleged misconduct on Nike’s sales, reputation, brand, or business generally. To the extent that the harm Nike has suffered due to StockX’s alleged misconduct was so significant as to be irreparable, as

April 27, 2023; “Nike Refurbished,” Nike, available at <https://www.nike.com/sustainability/nike-refurbished>, accessed May 3, 2023.

¹⁵⁷ Nike 2022 10-K, at p. 5. While Nike’s 2022 10-K also states that Nike “Direct operations” compete with “multi-brand retailers” which sell Nike products and with “digital commerce platforms,” it is unclear if this includes StockX and other secondary marketplace platforms, though the testimony of Nike’s corporate representatives that StockX is not considered a competitor of Nike suggests that it does not.

¹⁵⁸ See, e.g., Nike 2022 10-K, at pp. 5; 11.

¹⁵⁹ It is normal and customary to review company’s communications and communications of third parties that follow the company to assess the salience of issues being studied in a given case.

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Nike claims, I would expect this harm or evidence related to this harm to be reported by either Nike or one of the many analysts that follow Nike.¹⁶⁰

55. I reviewed Nike’s investor calls over the period 2020 to 2022 for commentary on Nike’s sales and brand reputation. During this period, Nike attributed any quarters with a decline in sales to the impacts of COVID-19 and the resulting store closures, supply chain issues such as factory closures, and declines in its wholesale business.¹⁶¹ Nike’s executives made no statements suggesting that any declines in sales were due to the sale of counterfeit goods in general, let alone

¹⁶⁰ While publicly traded companies are not mandated to hold quarterly earnings calls with potential investors, they often do. According to a 2017 note prepared by the United Nations Conference on Trade and Development (UNCTAD) secretariat, “voluntary disclosures have become an important, frequent way for companies to inform capital markets of financial performance and communicate the stewardship of available resources. The means of such disclosure include conference calls, investor presentations, management forecasts, sustainability reports and online earnings guidance and information sharing. … Even if not required to do so, companies often elect to report information that is useful in assessing their future prospects, to avoid being perceived as hiding unfavourable information and to differentiate themselves from less well managed companies in the competition for capital.” *See* UNCTAD Secretariat, “The Role of Disclosure in Risk Assessment and Enhancing the Usefulness of Corporate Reporting in Decision-making,” 2017, at p. 4. Academic research has also shown that companies disclose material information on earnings calls. For example, Frankel et al. (1999) find “that conference calls provide information to market participants over and above the information contained in the corresponding press release, as evidenced by elevated return variances and trading volumes. Additionally, average trade size is higher during the time of conference calls, suggesting that larger investors trade on the released information. These results indicate that material information is released during conference calls and that a subset of large investors trade on this information in real time.” *See* Frankel, R., M. Johnson, and D. Skinner, “An Empirical Examination of Conference Calls as a Voluntary Disclosure Medium,” *Journal of Accounting Research*, 1999, Vol. 37, No. 1, pp. 133-150, at pp. 149-150. Similarly, equity research reports produced by various analysts are meant to “provide the market with valuable information on companies, industries, and market trends.” In particular, company reports highlight “the latest news, company announcements, earnings reports, Buy Sell Hold ratings, M&A activity, *anything that impacts the value of the company.*” (emphasis added) The analysts who prepare equity research reports “are deep subject matter experts who are often former executives, industry veterans, or academics.” “These analysts conduct in-depth research and publish reports on corporations, … offering an expert lens into a subject.” They “develop high-level expertise” in a company or a group of companies, and “monitor market data and news reports and speak to contacts within the companies/industries they study to update their research daily” because they “need to comprehend everything about their ‘coverage’ to give investment endorsements.” Hence, if the harm to Nike was substantial, this harm or evidence related to this harm would likely be the subject of discussion by analysts who study and follow Nike for investors. *See* “The Value of Equity Research,” AlphaSense, available at <https://www.alpha-sense.com/resources/equity-research-guide/>, accessed May 4, 2023.

¹⁶¹ *See* Exhibit 3A.

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due to counterfeit sales on secondary platforms, let alone counterfeit sales on StockX in particular.¹⁶² In fact, Nike executives did not make any mention of counterfeit goods or secondary marketplaces like StockX on these calls at all. In the same period, Nike also emphasized the strength – and, in fact, the growth – of its brand on every call, evidenced by its strong consumer demand and growth in repeat buyers.¹⁶³ Nike’s investor calls included no commentary on diverted sales because of counterfeiting or any other evidence that Nike’s brand was at all harmed by the alleged sale of counterfeit goods on StockX’s platform, or by StockX’s advertising claims.

56. Similarly, I reviewed analyst reports’ discussions of Nike’s business for any commentary on the health of Nike’s sales and brand and any commentary on the impact of StockX and other secondary retailers on Nike’s business.¹⁶⁴ In these reports, analysts attributed any decline or predicted decline in Nike’s sales to such risks as inflation, geopolitical tensions, lockdowns due to COVID-19, or supply chain issues.¹⁶⁵ Analyst commentary indicates that Nike’s brand is strong, evidenced by consumer demand and Nike’s market share, and points to growing popularity of Nike’s brands, evidenced by strong consumer engagement and growth in repeat buyers.¹⁶⁶ Analysts also suggested that the high price some Nike products receive in the secondary marketplace is an indicator of Nike’s brand strength.¹⁶⁷ Additionally, rather than suggesting that Nike has been harmed by secondary marketplaces like StockX, analyst commentary indicates that secondary

¹⁶² See Exhibit 3A.

¹⁶³ See Exhibit 3B.

¹⁶⁴ I reviewed 20 equity analyst reports written about Nike from 2020 to 2022 that included the terms “secondary market” and/or “resale market.” Of the 20 reports, 16 contained relevant commentary and are included in Exhibits 4A-4C, while 4 did not include any relevant commentary. The full list of the 20 reports I reviewed is provided in Exhibit 2.

¹⁶⁵ Exhibit 4A.

¹⁶⁶ Exhibit 4B.

¹⁶⁷ Exhibit 4C.

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marketplaces actually benefit Nike by creating higher demand for its products in the primary marketplace and creating more excitement and exclusivity for the Nike brand.¹⁶⁸ No analysts commented on lost sales due to counterfeiting or advertising claims by secondary marketplaces, or provided any evidence of a decline or harm to Nike’s brand value.¹⁶⁹

57. From this analysis, I was unable to identify any publicly available evidence of actual harm to Nike, either financial or reputational, based on any of StockX’s activities that form the basis of Nike’s allegations in this case. This finding is consistent with the deposition testimony of Nike’s witnesses that there is no specific harm that Nike has suffered that is attributable to StockX’s conduct.

3. Nike has benefited from StockX’s platform and actions

a. Nike derives several benefits from StockX’s platform

58. Nike benefits from the existence of StockX’s platform, and secondary marketplaces in general, in a variety of ways. As I explain in detail below, the existence of vibrant resale marketplaces for a brand’s products brings more attention and consumers to the brand, and can have a substantial halo effect on the brand’s reputation. Especially where brands offer scarce or limited-edition products, the existence of resale markets not only can drive additional primary sale activity (because the primary sale will also attract individuals interested in reselling, not solely those interested in directly using the product), but also can expand the universe of consumers exposed to the brand’s products beyond those who can access the products at primary sale.

¹⁶⁸ Exhibit 4C.

¹⁶⁹ Exhibit 4A-4B.

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59. StockX helps create hype for certain Nike products and enhances Nike’s brand value by increasing consumer awareness of and exposure to the brand through the publication of articles discussing the history of certain Nike branded sneakers, creation of social media posts, and collaborations with influencers, musicians, athletes, and other individuals for the purpose of promoting Nike products traded on the platform.¹⁷⁰

60. Resale platforms like StockX help create additional hype, and, as a consequence, demand, for Nike products. To create brand cachet, companies often use scarcity (*e.g.*, limited-edition product releases or “drops”) to drive up demand for their products.¹⁷¹ As a research analyst at financial services firm Cowen Inc. explained, “while the sneaker brands are not capturing any resale revenue, they benefit indirectly because [the resale] market generates buzz for them. So they carefully—and secretly—manage the supply of their hottest items, leading to wild spikes in resale prices.”¹⁷² A research analyst at financial services provider BMO Capital Markets has

¹⁷⁰ See, *e.g.*, Baylis, M., “The Buyer’s Guide: Nike Dunk,” StockX Magazine, February 18, 2021, available at <https://stockx.com/news/the-buyers-guide-nike-dunk/>, accessed May 3, 2023; Forester, P., “Shop the Look: Jamad Fiin, Built Different,” StockX Magazine, March 18, 2022, available at <https://stockx.com/news/shop-the-look-jamad-fiin-whm22/>, accessed May 3, 2023; “Sallys Sneakers is Built Different,” StockX Magazine, March 27, 2023, available at <https://stockx.com/news/sallys-sneakers-is-built-different/>, accessed May 3, 2023.

¹⁷¹ See, *e.g.*, Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023; “Inside the ‘Hype’ Business Model,” Courier, October 7, 2021, available at <https://mailchimp.com/courier/article/hype-economics/>, accessed April 14, 2023.

¹⁷² Griffith, E., “Buy Low-Tops, Sell High-Tops: StockX Sneaker Exchange Is Worth \$1 Billion,” The New York Times, June 26, 2019, available at <https://www.nytimes.com/2019/06/26/technology/trading-sneakers-stockx.html>, accessed May 1, 2023. Cowen Inc. is a “diversified financial services firm that provides investment banking, research, sales and trading, prime brokerage, outsourced trading, global clearing, and commission management services.” Cowen Inc. was acquired by TD Bank Group in March 2023. “TD Completes Acquisition of Cowen Inc.” TD Bank Group, March 1, 2023, available at <https://td.mediaroom.com/2023-03-01-TD-completes-acquisition-of-Cowen-Inc>, accessed April 30, 2023.

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similarly suggested that brands like Nike indirectly benefit from the existence of resale platforms like StockX, stating:¹⁷³

The reality is resale within footwear has become critical to the entire footwear ecosystem The fact that resale exists is what allows for such strong sell-through [of products from Nike and its peers].

61. That is, because certain products are scarce, consumers turn to secondary marketplaces to obtain these in-demand products, even if those products cost much more than originally at retail.¹⁷⁴ In turn, it is widely reported that Nike directly benefits from resale marketplaces by releasing more products in limited editions knowing resale platforms like StockX may create additional demand for such products.¹⁷⁵ Many Nike limited-release products are highly coveted because of their secondary resale value and association with exclusivity.¹⁷⁶ Platforms like StockX lead customers to view products such as sneakers as an investment or an asset, with realizable value in the secondary marketplace, which leads to additional sales and allows brands

¹⁷³ “Nike’s Executive Saga Exposes Uneasy Relationship with Resellers,” Digital Commerce 360, March 3, 2021, available at <https://www.digitalcommerce360.com/2021/03/03/nikes-executive-saga-exposes-uneasy-relationship-with-resellers/>, accessed May 1, 2023; “About Us,” BMO Capital Markets, available at <https://capitalmarkets.bmo.com/en/about-us/>, accessed April 30, 2023.

¹⁷⁴ See, e.g., Deng, V., “Resale for the Tiffany & Co. x Nike Air Force 1 Is Double Its Retail Price,” Footwear News, March 8, 2023, available at <https://footwearnews.com/2023/fashion/sneakers/tiffany-co-nike-air-force-1-resale-info-1203426402/>, accessed May 3, 2023; “Inside the ‘Hype’ Business Model,” Courier, October 7, 2021, available at <https://mailchimp.com/courier/article/hype-economics/>, accessed April 14, 2023.

¹⁷⁵ “Inside the ‘Hype’ Business Model,” Courier, October 7, 2021, available at <https://mailchimp.com/courier/article/hype-economics/>, accessed April 14, 2023 (“Of the biggest sneaker brands in the world, Nike is the best at leveraging the benefits of the resale economy. According to HighSnobiety’s 2021 Sneaker Report, Nike took a completely different approach to the likes of Adidas in the first quarter of 2021, by releasing far more sneakers than any of its competitors (‘an absolutely mind-boggling number’), partly because it knew the brand was performing so well on resale platforms like StockX. ‘The share of hyped sneakers (defined as sneakers reselling for at least 50% over retail) was remarkably high,’ says the report. ‘Around 50% of all Nike sneakers that were released in Q1 and were available on StockX have a price premium of 50% or more.’”).

¹⁷⁶ Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023.

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to charge higher prices.¹⁷⁷ Consumers may also make more frequent or higher value purchases in the primary marketplace in anticipation of reselling items in the secondary marketplace.¹⁷⁸

62. For example, market commentary provider Barron’s, reporting on commentary from Nick Kernan, a Cowen analyst, claims that “[a] [s]trong [s]neaker-[r]esale [m]arket [i]s [a]nother [b]oon for Nike.”¹⁷⁹ The article explains:¹⁸⁰

... estimates put the global sneaker-resale market at \$30 billion by around 2030, implying a 16% compound annual growth rate. So far the demand for particular sneakers has been so high that some resellers call it their full-time job. That’s good for all the companies involved, but particularly Nike, Kernan writes. ‘The durability of Nike’s Consumer Direct Offense and ability to fuel the sneaker resale ecosystem highlights near sector-best growth and returns

¹⁷⁷ Wetzbarger, G., “The Rise of Recommerce: Resale and Authenticity,” American Bar Association, March 30, 2022, available at https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2021-22/march-april/rise-recommerce-resale-authenticity/, accessed May 3, 2023 (“The resale market leads to customers making more purchases at retail. When a customer knows she can resell her item, she’s going to be willing to pay a little more for it.’ The demand by resale buyers for your product, what they’re willing to pay for it, and how fast it sells are clear indicators of the strength of your label.”).

¹⁷⁸ Abtan, O. et al., “Why Luxury Brands Should Celebrate the Pre-Owned Boom,” Boston Consulting Group X Vestiaire Collective, October 16, 2019, available at https://web-assets.bcg.com/img-src/BCG-Why-Luxury-Brands-Should-Celebrate-the-Preowned-Boom-Oct-2019_tcm9-232622.pdf, at p. 5. *See also*, Gilliland, N., “StockX: Gen Z Consumers Are Looking for Meaning and Relaxed About ‘Exploring Non-Traditional Retail Channels,’” Econsultancy, October 11, 2021, available at <https://econsultancy.com/stockx-gen-z-consumers-are-looking-for-meaning-and-relaxed-about-exploring-non-traditional-retail-channels/>, accessed April 7, 2023 (“[T]he smart StockX trader’ [is] someone who ‘will buy three pairs of the product (if they can). They will buy one because they want to wear it, a second one because they want to hold it – because they feel confident that over time it will appreciate in value – and they will keep the third one to resell within a short window and pay for the other two.’”); Hunt, J., “Sneakerheads Have Turned Jordans and Yeezys into a Bona Fide Asset Class,” Bloomberg, February 25, 2021, available at <https://www.bloomberg.com/features/2021-sneaker-investment/>, accessed April 27, 2023.

¹⁷⁹ Rivas, T., “A Strong Sneaker-Resale Market Is Another Boon for Nike,” Barron’s, May 24, 2023, available at <https://www.barrons.com/articles/nike-stock-sneakerheads-51653407159>, accessed May 2, 2023; “Barron’s,” Dow Jones, available at <https://www.dowjones.com/products/barrons/>, May 2, 2023; Cowen Inc. was acquired by TD Bank Group in March 2023. “TD Completes Acquisition of Cowen Inc.” TD Bank Group, March 1, 2023, available at <https://td.mediaroom.com/2023-03-01-TD-completes-acquisition-of-Cowen-Inc>, accessed April 30, 2023.

¹⁸⁰ Rivas, T., “A Strong Sneaker-Resale Market Is Another Boon for Nike,” Barron’s, May 24, 2023, available at <https://www.barrons.com/articles/nike-stock-sneakerheads-51653407159>, accessed May 2, 2023.

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potential and meaningful upside in shares following its recent pullback.’

63. In addition to allowing consumers to view sneakers as an asset, StockX and other secondary marketplaces also benefit brands like Nike by increasing the liquidity of shoes purchased from these brands. This, in turn, increases the value of those shoes and, accordingly, benefits the brands. According to Professors Hubbard and O’Brien, dedicated resale sites like StockX and GOAT “have greatly increased the liquidity of sneakers, or the ease with which sneakers can be resold. In effect, limited-edition sneakers have become an asset like stocks, bonds, or gold because they can be bought and sold in the secondary market that exists on the online resale sites.”¹⁸¹ They went on to note that:¹⁸²

an active resale market increases the demand for shoes, just as individual investors increased their demand for individual stocks when it became possible to easily buy and sell stocks online using sites like TD Ameritrade, E*Trade, and Fidelity. So manufacturers benefit from knowing that most of their limited-edition shoes will sell out. One industry analyst singled out ‘The durability of Nike’s ... ability to fuel the sneaker resale ecosystem ...’ as a particular strength of the company. In addition, manufacturers may believe that the publicity about limited edition shoes rapidly selling out may spill over to increased demand for other shoes the manufacturers sell.

¹⁸¹ Hubbard, G., and T. O’Brien, “The Economics of Sneaker Reselling,” Hubbard O’Brien Economics, August 2, 2022, available at <https://hubbardobrieneconomics.com/2022/08/02/the-economics-of-sneaker-reselling/>, accessed May 2, 2023.

¹⁸² Hubbard, G., and T. O’Brien, “The Economics of Sneaker Reselling,” Hubbard O’Brien Economics, August 2, 2022, available at <https://hubbardobrieneconomics.com/2022/08/02/the-economics-of-sneaker-reselling/>, accessed May 2, 2023.

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64. Further, even unsold products that would normally cost brands a lot of money in terms of lost profits and storage costs may have or retain value because of the existence of secondary marketplace platforms like StockX.¹⁸³ As one online publication explained:¹⁸⁴

On platforms like StockX, resellers make a virtue of when products are discontinued, racing to buy them all up and waiting until demand rises again. Then they emphasize that the styles are rare – that they are no longer made – and come with all of the original packaging. Owners of Nike deadstock, for example, made a lot of money when Netflix released The Last Dance, a 10-part series about Michael Jordan’s final season with the Chicago Bulls, which made many unfashionable sneakers popular again.

65. In fact, platforms like StockX may serve as an indicator or measure of the demand for the brand as these platforms “can often more accurately determine how in-demand a particular sneaker is.”¹⁸⁵ As a research analyst for the footwear and apparel industries at global quantitative trading firm Susquehanna International Group explained, the secondary platforms help the brands like Nike understand how many pairs of a particular sneaker to “put out in the market, so they don’t have too much out, so they don’t end up with markdowns.”¹⁸⁶

¹⁸³ “Inside the ‘Hype’ Business Model,” Courier, October 7, 2021, available at <https://mailchimp.com/courier/article/hype-economics/>, accessed April 14, 2023; Hunt, J., “Sneakerheads Have Turned Jordans and Yeezys into a Bona Fide Asset Class,” Bloomberg, February 25, 2021, available at <https://www.bloomberg.com/features/2021-sneaker-investment/>, accessed April 27, 2023.

¹⁸⁴ “Inside the ‘Hype’ Business Model,” Courier, October 7, 2021, available at <https://mailchimp.com/courier/article/hype-economics/>, accessed April 14, 2023.

¹⁸⁵ Green, D., “Sneaker Makers Like Nike and Adidas Are Facing a Dilemma as Resale Is on Its Way to Becoming a \$6 Billion Business,” Insider, August 2, 2019, available at <https://www.businessinsider.com/nike-adidas-role-sneaker-resale-market-2019-8>, accessed May 1, 2023. *See also*, “Nike - A Secondary Market Analysis,” Seeking Alpha, October 19, 2017, available at <https://seekingalpha.com/article/4114636-nike-secondary-market-analysis>, accessed May 4, 2023.

¹⁸⁶ Green, D., “Sneaker Makers Like Nike and Adidas Are Facing a Dilemma as Resale Is on Its Way to Becoming a \$6 Billion Business,” Insider, August 2, 2019, available at <https://www.businessinsider.com/nike-adidas-role-sneaker-resale-market-2019-8>, accessed May 1, 2023. “About Us,” SIG, available at <https://sig.com/about/>, accessed April 30, 2023.

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66. In addition, StockX has helped increase consumer awareness of the Nike brands through its independent development and publication of articles and other digital content featuring Nike products. For example, StockX’s blog titled “The Magazine” and a series of “Buyer’s Guide” articles showcase Nike products extensively.¹⁸⁷ StockX’s Buyer’s Guide articles are promotional pieces written by StockX’s content creators that describe the products’ or brands’ history, popularity, and value, while offering integrated recommendations for purchase.¹⁸⁸ Of the 27 Buyer’s Guide articles on StockX’s website as of April 2023, eleven articles were dedicated solely to Nike products.¹⁸⁹ Additionally, each week, StockX publishes a “Drop List” of the most anticipated limited-edition shoe releases of the week, which often prominently feature multiple Nike products in the list of “best sneakers releasing this week” and as the “editor’s pick of the week.”¹⁹⁰ By investing time and resources into content creation and the promotion of Nike products, StockX is increasing consumers’ exposure to and awareness of the Nike brand at no cost to Nike.

¹⁸⁷ “The Magazine,” StockX, available at <https://stockx.com/news/>, accessed May 3, 2023; “StockX Buyers Guides,” StockX, available at <https://stockx.com/news/series/buyers-guides/>, accessed May 3, 2023.

¹⁸⁸ See, e.g., “StockX Buyers Guides,” StockX, available at <https://stockx.com/news/series/buyers-guides/>, accessed May 3, 2023; Baylis, M., “The Buyer’s Guide: Jordan Golf Shoes,” The StockX Magazine, April 8, 2021, available at <https://stockx.com/news/the-buyers-guide-jordan-golf-shoes/>, accessed May 3, 2023; Baylis, M., “The Buyer’s Guide: Nike Dunk,” StockX Magazine, February 18, 2021, available at <https://stockx.com/news/the-buyers-guide-nike-dunk/>, accessed May 3, 2023.

¹⁸⁹ Eleven articles cover the following Nike products: Nike Blazer, Air Jordan 3, Air Jordan 11, Nike Air Force 1, Air Jordan 4, Air Jordan 1, Jordan Golf Shoes, Air Jordan 13, Nike Dunk, and Nike SB Dunk Low. One other buying guide covers Converse Sneakers, which are made by Nike. “StockX Buyers Guides,” StockX, available at <https://stockx.com/news/series/buyers-guides/>, accessed May 3, 2023.

¹⁹⁰ The “Drop List” articles highlight features of Nike products, describe their value as an investment, and provide links to purchase products. “The Drop List,” StockX, available at <https://stockx.com/news/series/the-drop-list/>, accessed May 3, 2023. See e.g., Mustafa, J., “The Drop List 03-27-23,” StockX, March 27, 2023, available at <https://stockx.com/news/the-drop-list-03-27-23-best-sneakers-releasing-this-week/>, accessed May 3, 2023; Mustafa, J., “The Drop List 03-21-23,” StockX, March 21, 2023, available at <https://stockx.com/news/the-drop-list-03-21-23-best-sneakers-releasing-this-week/>, accessed May 3, 2023.

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67. Further, StockX has also collaborated with influencers, athletes, and other individuals to create promotional content that features Nike products. For example, as part of StockX’s “Built Different” campaign, female basketball player for Emmanuel College and influencer Jamad Fiin participated in an exclusive interview with StockX that introduced nine products that support her identity, including six Nike products.¹⁹¹ As another example sneaker content creator Sally Javadi, known as the “most followed sneakerhead” who “is revolutionizing the social media world of women’s sneakers,”¹⁹² participated in an exclusive interview with StockX to talk about her passion for sneakers,¹⁹³ while recommending different Nike products in collaboration with StockX on her personal social media account.¹⁹⁴ By prominently featuring Nike products on StockX’s website and blog, and collaborating with influencers to showcase some of the Nike products traded on the platform, StockX further increases awareness and potential demand for the Nike brands.

b. StockX’s verification process has led to the removal of a substantial number of inauthentic products

68. According to StockX’s Vice President of Corporate and Strategic Development and StockX’s Rule 30(b)(6) designee, Mr. Huber, StockX revolutionized the sneaker resale industry

¹⁹¹ Forester, P., “Shop the Look: Jamad Fiin, Built Different,” StockX Magazine, March 18, 2022, available at <https://stockx.com/news/shop-the-look-jamad-fiin-whm22/>, accessed May 3, 2023.

¹⁹² “TBS Meets: Sally Javadi, The Coolest Sneakerhead Woman Behind @Sallysneakers,” March 6, 2020, available at <https://theblondesalad.com/en/fashion/tbs-meets-sally-torabi-the-coolest-sneakerhead-woman-behind-sallysneakers/>, accessed May 4, 2023.

¹⁹³ “Sallys Sneakers is Built Different,” StockX Magazine, March 27, 2023, available at <https://stockx.com/news/sallys-sneakers-is-built-different/>, accessed May 3, 2023.

¹⁹⁴ *See, e.g.*, Screenshot of Sally Javadi’s Instagram Post Featuring Nike SB Dunk Lobster (StockX Mentioned), Instagram, January 9, 2023, available at <https://www.instagram.com/reel/CnM7XvKubgr/?igshid=YmMyMTA2M2Y=>, accessed April 11, 2023; Screenshot of Sally Javadi’s Instagram Post Featuring Nike x Ambush AF1 (StockX Mentioned), Instagram, December 17, 2023, available at <https://www.instagram.com/reel/CmRfuTiqowk/?igshid=YmMyMTA2M2Y=>, accessed April 11, 2023.

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by creating a marketplace where all tradable products were verified by humans.¹⁹⁵ Prior to the launch of platforms like StockX and GOAT, limited-edition sneaker trades were facilitated via private messages on internet forums or through online marketplaces where sellers shipped goods to buyers directly.¹⁹⁶ Any issues between buyers and sellers were remediated through customer service after the product delivery.¹⁹⁷ StockX was launched to create an organized purchasing experience, where StockX was the intermediary between buyers and sellers.¹⁹⁸

69. Since its inception, StockX’s verification process has worked to ensure that all products on StockX’s platform meet StockX’s own standards for what is traded on its platform. StockX’s verification experts use a multi-step process to determine if a product meets its standards. This process checks whether the product is brand new, has the original packaging and necessary

¹⁹⁵ Huber Deposition, at pp. 18-19, 244-245. *See also*, Answer to First Amended Complaint, *Nike, Inc. v. StockX LLC*, United States District Court for the Southern District of New York, June 6, 2022, at p. 2; Townsend, C., “What Does StockX Verified Actually Mean?” Sole Retriever, January 26, 2023, available at <https://www.soleretriever.com/news/articles/what-does-stockx-verified-actually-mean>, accessed May 1, 2023.

¹⁹⁶ Huber Deposition, at pp. 17-19 (“So prior to the founding of StockX, it was very difficult to transact in limited edition sneakers, other collectibles, in a safe way. ... You know, ... people who are interested in sneakers, a sneakerhead, as I identify myself, we spent time on Internet forums: NikeTalk, InStyle Shoes. And if you wanted to purchase these shoes, which were primarily – they’re almost always, in all cases, sold out instantly upon release -- you would literally agree through private messages and, believe it or not, send a money order to a stranger on the Internet and hope that you were going to receive product, hope the product you were going to receive were -- that you received was what was promised. If you fast-forward a little bit, the early iterations of marketplaces came to be. And those marketplaces were in a posture where they would remediate issues that a buyer and seller might have after the fact. So if the seller and buyer agreed to a transaction around a pair of Air Jordan 1s in the powder blue color or whatever you want to choose as an example, the seller would effectively ship whatever the heck they wanted to that buyer. And if the buyer had an issue, they would have to take pictures of it, get in contact with customer service at whatever the marketplace was. The radical difference with StockX is that we first organized that purchasing experience, and then injected our verification process in the middle. So instead of having to remediate issues after the fact, there was a single unbiased party, StockX, that sat in the middle of that transaction. And in order to provide that experience, we had to create a verification process. And our verification process is our own proprietary process with standards that we’ve created to determine what items are or are not eligible to be sold on our platform, based on that process we created.”).

¹⁹⁷ Huber Deposition, at pp. 18-19.

¹⁹⁸ Huber Deposition, at p. 19.

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accessories, and is free from any evidence of damage, manufacturing defects, or indication the product is not authentic.¹⁹⁹ StockX’s verification experts also review products to confirm they match the purchase order (*e.g.*, they are of the correct size, color, and are the product ordered).²⁰⁰

70. StockX continuously makes upgrades to its verification process. Since its founding, StockX has invested hundreds of millions of dollars in the development and execution of its verification process over time.²⁰¹ As of 2023, StockX operates 14 authentication centers globally, employs 300 authenticators, and has an average of more than one million products go through its verification process each month.²⁰² StockX has “compiled data from every product … verified on StockX to build a database of elements that don’t meet [its] standards” that is “updated daily and constantly serves to keep [its] team educated and up to date.”²⁰³ StockX also utilizes machine learning and artificial intelligence techniques to enhance its authenticators’ inspections.²⁰⁴ StockX’s continued investment in its verification process allows it to maintain high standards for the products that are traded on the platform, including Nike products.²⁰⁵ In fact, StockX’s efforts to maintain the quality of the goods traded on the platform have resulted in high purchase satisfaction among StockX’s customers.²⁰⁶ Nike’s employees have also praised StockX’s

¹⁹⁹ “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²⁰⁰ Huber Deposition, at pp. 244-245.

²⁰¹ Huber Deposition, at p. 133.

²⁰² “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²⁰³ “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²⁰⁴ “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²⁰⁵ “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²⁰⁶ See, e.g., STX0021868-951, at 925, suggesting that the purchase satisfaction among StockX customers surveyed in November 2019 appears to be high (approximately 94 percent of customers are either “Very satisfied” or “Somewhat satisfied” with only approximately 7 percent of customers indicating they are “Not very satisfied” or “Not at all satisfied”).

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verification efforts to stop sales of counterfeit products and ensure consumers receive only authentic products.²⁰⁷

71. Over the years, StockX has rejected a significant number of products that did not meet StockX’s stringent authentication and verification process. Since 2016, StockX has rejected more than \$500 million worth of products that did not meet its verification standards and stopped more than \$70 million worth of suspected counterfeit sneakers from trading on its platform.²⁰⁸ In 2022 alone, StockX rejected over 330,000 products from being sold because they failed to meet StockX’s verification standards.²⁰⁹ By rejecting products that do not meet StockX’s standards, including Nike products, StockX’s extensive investment in its verification process ensures that consumers who purchase goods on the StockX platform are likely to receive high quality products that meet their expectations. Brands like Nike stand to benefit from StockX’s verification efforts because consumers are less likely to receive defective or inauthentic items featuring these brands’ trademarks, meaning the theoretical harm that Nike’s Rule 30(b)(6) witness speculated it might suffer is less likely to come to fruition.

c. StockX’s verification process has made it more difficult to trade

²⁰⁷ Answer to First Amended Complaint, *Nike, Inc. v. StockX LLC*, United States District Court for the Southern District of New York, June 6, 2022, at p. 3 (“Nike’s Vice President of Global Litigation and Investigations praised StockX in writing as a ‘good actor’ in connection with efforts to remove a counterfeit listing, and in 2020, Nike’s Brand Protection Director of Authentication and Innovation described StockX and Nike Brand Protection as ‘aligned on ensuring [] consumers only receive authentic product.’”); NIKE0029089; NIKE0030428-429, at 428 (“We appreciate that StockX takes this issue [of counterfeits] seriously and promptly acted to remove the [fake] product.”).

²⁰⁸ “Verification,” StockX, available at <https://stockx.com/about/verification/>, accessed May 3, 2023.

²⁰⁹ “Big Facts: Current Culture Index 2023,” StockX, available at <https://stockx.com/about/sx-market-insights/big-facts-current-culture-index-2023/>, accessed April 27, 2023.

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**counterfeit products**

72. The creation of the StockX platform, where all products that are resold to consumers are rigorously examined using StockX’s verification process and sellers that attempt to sell counterfeit items are punished, has raised the resale industry’s standards and made it more difficult to trade counterfeit products in the secondary marketplace. This has benefited brands like Nike by reducing the chance of consumers buying counterfeit products featuring the brands’ trademarks and labels.

73. Nike does not authenticate shoes for customers who wish to buy or sell products on the secondary marketplace, or provide any way for them to do so on their own.²¹⁰ As a practical matter, this meant that for many years consumers purchasing in the secondary market had limited options to identify potentially inauthentic products prior to purchase, or getting their money back if they had legitimate concerns about a purchased item’s authenticity.

74. That changed when StockX and its competitors (*e.g.*, GOAT) began offering authentication services in the secondary marketplace.²¹¹ StockX’s verification process was established to ensure that only high-quality items that meet StockX’s stringent standards are traded on the platform.²¹² Since StockX’s launch, it has publicized this verification process to potential

²¹⁰ See, *e.g.*, NIKE0039100; NIKE0041004 and NIKE0041006-018, at 006; NIKE0041169 and NIKE0041171.

²¹¹ White, R., “How Fake Air Jordans Turned These L.A. Pals’ Sneakerhead Dream into a Powerhouse Platform,” Los Angeles Times, July 16, 2021, available at <https://www.latimes.com/business/story/2021-07-16/goat-group-sneaker-empire-funding-expansion-plans>, accessed May 3, 2023; Huber Deposition, at pp. 244-245; Townsend, C., “What Does StockX Verified Actually Mean?” Sole Retriever, January 26, 2023, available at <https://www.soleretriever.com/news/articles/what-does-stockx-verified-actually-mean>, accessed May 1, 2023.

²¹² Huber Deposition, at p. 19.

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buyers and sellers that might use its platform.²¹³ In fact, an important part of its business plan, and how it has differentiated itself from some of the other platforms, involves the existence of this verification process.²¹⁴ StockX has highlighted this verification process publicly, which has served as a warning to would-be sellers of counterfeit goods that StockX takes verification seriously and heavily scrutinizes every good sold on its platform.

75. StockX has also adopted policies that punish or ban sellers attempting to sell inauthentic products, misrepresented products, or products that fail to meet StockX’s quality standards.²¹⁵ StockX’s Terms and Conditions state:²¹⁶

StockX takes counterfeiting, fraud and market manipulation very seriously. If a seller provides a counterfeit item or attempts to defraud any buyer or StockX, StockX reserves the right to do any or all of the following, in its sole discretion: (i) remove any or all of seller’s listings from the Services; (ii) cancel any or all of seller’s

²¹³ See, e.g., “The Stock Market for Things,” StockX, August 29, 2017, available at <https://web.archive.org/web/20170829213329/https://stockx.com/how-it-works>, accessed May 3, 2023; “Verification Process,” StockX, September 9, 2017, available at <https://web.archive.org/web/20170909105543/http://help.stockx.com/general-information/verification-process-513130>, accessed April 16, 2023. News of StockX’s launch also emphasized the verification process for products sold on the site. See, e.g., Roberts, D., “The Stock Market for Sneakers is Here,” Yahoo Finance, March 7, 2016, available at <https://finance.yahoo.com/news/stock-market-for-sneakers-stockx-adidas-yeezy-153215844.html>, accessed May 3, 2023 (“StockX is filling the demand to bring visibility, efficiency and authenticity to tangible products that financial and commodities markets have used for decades ... There’s another key competitive advantage StockX says it offers over eBay: on eBay, sellers ship their wares straight to buyers, which can cause problems and lead to authenticity disputes ... When a purchase is made on StockX, the seller sends the shoes to the company’s facility in Detroit to verify the product. StockX then sends the shoes along to the buyer. It makes StockX the authoritative middleman in the equation.”); “Why Cavs Owner Dan Gilbert Is Investing in Sneaker Resellers,” Sole Collector, February 8, 2016, available at <https://solecollector.com/news/2016/02/campless-stockx-dan-gilbert>, accessed April 28, 2023 (“There are no legit checks, there’s no dealing with unknown sellers, there’s no wondering about pricing. If StockX gets the shoe and finds it’s not authentic, they will send the shoes back to the seller, penalize them financially and do what they can to work with their other sellers to find the same pair of shoes for the same price (as long as the price was within reason). If they can’t find anything, they’ll refund you with their apologies.”).

²¹⁴ Huber Deposition, at p. 19.

²¹⁵ Huber Deposition, at p. 136.

²¹⁶ NIKE0000253-275, at 254. StockX included the statement that “StockX takes counterfeiting, fraud and market manipulation very seriously” in its Terms and Conditions as far back as 2017. See “StockX Terms and Conditions of Use,” StockX, May 11, 2017, available at <https://web.archive.org/web/20170829211659/https://stockx.com/terms>, accessed April 25, 2023.

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orders pending through the Services; (iii) withhold any payments due to seller; (iv) place limits on seller’s buying and selling privileges; (v) charge seller’s payment method for costs, expenses and fees incurred by StockX as a result of seller’s action or inaction, including charging seller for the cost of replacement items, the value of coupons and gift certificates provided to the buyer, reprinting fees incurred by StockX, rerouting charges imposed by carriers, and refunds to the buyer; (vi) ship the item back to the seller at the seller’s cost (including any customs and duties amounts incurred by StockX); (vii) provide the counterfeit items to law enforcement or destroy the counterfeit items, (viii) temporarily or permanently suspend seller’s account, and (ix) charge seller’s payment method a minimum of \$15.00 USD or an amount up to 15% of the transaction amount, in StockX’s sole discretion, as a service fee.

76. Thus, StockX’s verification process increased the costs and risks to would-be counterfeiters from attempting to trade counterfeit products on the StockX platform. According to StockX’s Vice President of Corporate and Strategic Development, Mr. Huber, since its launch in 2016, StockX has generally seen a decline in the number of possibly counterfeit products that were attempted to be sold through the platform.²¹⁷ This is not surprising, as persons attempting to sell counterfeit products would be more likely to use platforms that will not inspect their products to identify potential counterfeits. Indeed, in its own activities to police counterfeits, Nike consistently identifies marketplaces that do not inspect all (or any) of the product sold on their platform – and has never once identified StockX in these lists.²¹⁸

²¹⁷ Huber Deposition, at p. 136 (“[A]necdotally, to my knowledge, we originally saw a higher percentage of fakes coming through our platform as -- or -- sorry -- not fakes -- items that appeared to be inauthentic, as fraudsters initially tested the quality of our authentication and verification process in the early days of the StockX platform.”). *See also*, Shea, B., “Sniffing Out Fakes: Authentication the ‘Secret Sauce’ to Explosive Growth of Sneaker Resale Markets StockX, GOAT,” December 2, 2019, available at <https://theathletic.com/1410590/2019/12/02/sniffing-out-fakes-authentication-the-secret-sauce-to-explosive-growth-of-sneaker-resale-markets-stockx-goat/>, accessed March 24, 2023.

²¹⁸ *See, e.g.*, NIKE0039827-832, at 829-830; NIKE0039821-826, at 823; NIKE0039841-846, at 843; NIKE0039847-853, at 849; NIKE0039833-840, at 835. *See also*, Carpin Deposition, at pp. 68, 70, 227-228 (testifying that, unlike eBay or Amazon, Nike does not monitor StockX regularly).

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77. In addition, StockX’s creation of a secondary marketplace where every single product is inspected and verified by a human authenticator forced other competitors to offer a similar service, thereby lifting the industry standards.²¹⁹ According to Mr. Huber, Vice President of Corporate and Strategic Development at StockX and StockX’s Rule (30)(b)(6) designee, prior to StockX’s launch, “there was no scaled or reputable marketplace player that conducted authentication and verification for every product that sold on its marketplace.”²²⁰ E-commerce platforms, such as eBay, that began operating prior to StockX and that did not provide authentication services, grew a reputation of unreliability among consumers²²¹ and, as a result, allowed StockX to thrive.²²² With consumers unwilling to engage in the purchase of higher-end collectible items on eBay, the platform’s share of the secondary marketplace was driven towards

²¹⁹ Huber Deposition, at pp. 133-134 (“Prior to our existence, there was no scaled or reputable marketplace player that conducted authentication and verification for every product that sold on its marketplace. And due to the experience that we provided, we have lifted the level of competition around us, and other marketplaces have begun to offer a competing service that presumes to identify -- or to authenticate and verify items sold on their platform. So the overall impact of StockX relative to consumer fraud and the buying and selling of items that may appear to be inauthentic has been improved by our existence.”).

²²⁰ Huber Deposition, at p. 133. Note that GOAT, another platform that was established for the purpose of reselling of sneakers that have been authenticated, likely launched around the same time as StockX in 2015. *See* White, R., “How Fake Air Jordans Turned These L.A. Pals’ Sneakerhead Dream into a Powerhouse Platform,” Los Angeles Times, July 16, 2021, available at <https://www.latimes.com/business/story/2021-07-16/goat-group-sneaker-empire-funding-expansion-plans>, accessed May 3, 2023.

²²¹ *See, e.g.*, STX0021868-951, at 913; Panzarino, M., “eBay Takes a Bite at StockX and GOAT with Sneaker Authentication for Sales \$100+ In the US,” October 12, 2020, available at <https://techcrunch.com/2020/10/12/ebay-takes-a-bite-at-stockx-and-goat-with-sneaker-authentication-for-sales-100-in-the-u-s/>, accessed May 3, 2023 (“[e]Bay’s reluctance to spin up a person-in-the-middle authentication program allowed a gap for StockX and GOAT to thrive, offering authentication for new and, in GOAT’s case, even pre-owned sneakers. … The power of authenticity, of course, is what drives the booming secondary market, where shoes can be limited to thousands of pairs or even dozens of pairs per release. Sneaker culture, which was born on the basketball court and driven largely by Black athletes, musicians and icons, is now squarely mainstream and very big business. [e]Bay has been slow to move here but has significant resources and *already* does brisk sneaker business, with 6 million sneakers sold in 2019.”).

²²² Panzarino, M., “eBay Takes a Bite at StockX and GOAT with Sneaker Authentication for Sales \$100+ in the US,” October 12, 2020, available at <https://techcrunch.com/2020/10/12/ebay-takes-a-bite-at-stockx-and-goat-with-sneaker-authentication-for-sales-100-in-the-u-s/>, accessed May 3, 2023.

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lower margin business.²²³ In fact, according to one April 2021 article, “StockX overtook eBay in sneaker sales in 2017 and [was] valued at nearly double its most direct competitor, GOAT,” another secondary marketplace platform that also aimed to authenticate the products sold on the platform and offered an “authentication promise.”²²⁴ To compete with StockX, other platforms began offering their own authentication services.²²⁵ For example, in October 2020, eBay began authenticating sneakers sold for more than \$100 in the U.S. using Sneaker Con’s authentication provider Sneaker Con Digital, later acquiring the service in November 2021.²²⁶ As of January 2022, eBay had experienced a six percent increase in high value purchases, “double-digit” growth in luxury sneaker sales, and an increase in consumer satisfaction since launching its authentication program.²²⁷

²²³ Panzarino, M., “eBay Takes a Bite at StockX and GOAT with Sneaker Authentication for Sales \$100+ in the US,” October 12, 2020, available at <https://techcrunch.com/2020/10/12/ebay-takes-a-bite-at-stockx-and-goat-with-sneaker-authentication-for-sales-100-in-the-u-s/>, accessed May 3, 2023.

²²⁴ Shelley, E., and D. Koren, “The Stock Market of Things: How One Resale Site Is Opening up Fashion’s Most Elusive Market,” April 23, 2021, available at <https://www.thembsgroup.co.uk/internal/the-stock-market-of-things-how-one-resale-site-is-opening-up-fashions-most-elusive-market/>, accessed March 28, 2023.

²²⁵ Huber Deposition, at pp. 244-245 (“[O]ur proprietary authentication and verification process is at the heart of what we do. There is no item, save for items that come directly from a brand or creator partner, that does not pass through our authentication and verification process. And as I talked about earlier, there was not anyone doing this prior to our success in removing some of the friction points around purchasing the -- the items in the categories in which we transact. And because we’ve started doing it, and because we took a stand against unverified product, many other competitors have joined our industry in the secondary market and attempted to replicate our authentication and verification process and have their own authentication and verification processes.”).

²²⁶ Panzarino, M., “eBay Takes a Bite at StockX and GOAT with Sneaker Authentication for Sales \$100+ in the US,” October 12, 2020, available at <https://techcrunch.com/2020/10/12/ebay-takes-a-bite-at-stockx-and-goat-with-sneaker-authentication-for-sales-100-in-the-u-s/>, accessed May 3, 2023; “eBay Acquires Sneaker Con Authentication Business,” PR Newswire, November 29, 2021, available at <https://www.prnewswire.com/news-releases/ebay-acquires-sneaker-con-authentication-business-301432741.html>, accessed March 24, 2023.

²²⁷ Webb, B., “Inside the Secretive World of Luxury Authentication,” Vogue Business, January 31, 2022, available at <https://www.voguebusiness.com/sustainability/inside-the-secretive-world-of-luxury-authentication-vestiaire-collective-the-realreal-ebay-stockx-goat>, accessed March 24, 2023.

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78. Along with incentivizing other platforms to also begin offering authentication services, StockX’s verification program appears to have led to greater demand for authentication services, as well as the development of a professional network around authenticators, professional development, and support staff.²²⁸ Thus, StockX “made it more difficult for bad actors to exist” in the sneaker marketplace and “helped lift the entire industry.”²²⁹

79. As discussed above, the verification process may differ across secondary marketplace platforms, with some platforms relying on machine learning and computer vision to virtually authenticate products, others employing specialized authenticators to perform physical verification, and yet others using a combination of both.²³⁰ Regardless of the process, however, such efforts—even if not infallible, as Nike alleges—are likely to yield substantial benefits to the brands, and ultimately consumers, by reducing the likelihood of counterfeit goods being traded on secondary marketplaces.²³¹ As discussed further below, the existence of guarantees, like StockX’s “Buyer Promise,” provide further protections to consumers.²³² The existence of inspection and

²²⁸ Webb, B., “Inside the Secretive World of Luxury Authentication,” *Vogue Business*, January 31, 2022, available at <https://www.voguebusiness.com/sustainability/inside-the-secretive-world-of-luxury-authentication-vestiaire-collective-the-realreal-ebay-stockx-goat>, accessed March 24, 2023 (“When StockX started hiring authenticators in 2018, [StockX] would covertly recruit from sneakerhead Facebook groups. ‘You couldn’t search for authenticators on LinkedIn, it was mostly enthusiasts doing it informally,’ [StockX general manager of EMEA Derek Morrison] explains. Now, there is a whole ecosystem of roles and support staff, including former interior designers, architects and hospitality workers.”).

²²⁹ Huber Deposition, at p. 134.

²³⁰ See, e.g., “Nurturing Customer Trust in Luxury Resale,” *Martechvibe*, November 2, 2021, available at <https://martechvibe.com/martech/nurturing-customer-trust-in-luxury-resale/>, accessed May 1, 2023; Davis, J., “The Best Designer Resale Sites” *Harper’s Bazaar*, March 21, 2023, available at <https://www.harpersbazaar.com/uk/fashion/what-to-wear/news/a34512/the-best-designer-resale-sites/>, accessed May 5, 2023.

²³¹ See, e.g., Parisi, D., “The Rise of Authentication Has Curbed the Flow of Counterfeits to Fashion Resellers,” *Glossy*, June 6, 2019, available at <https://www.glossy.co/fashion/the-rise-of-authentication-has-curbed-the-flow-of-counterfeits-to-fashion-resellers/>, accessed May 1, 2023.

²³² See, e.g., “What Is the StockX’s Buyer Promise?” StockX, April 17, 2023, available at <https://stockx.com/help/articles/What-is-The-StockX-Buyer-Promise>, accessed April 18, 2023.

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verification programs like StockX’s accordingly would be expected to provide substantial benefits to consumers and the marketplace in general. Absent such efforts, secondary marketplaces would offer considerably less protection to brands and consumers and there would be a dissipation of trust between the platforms and their users.²³³

IV. StockX’s Gains

A. Nike’s Allegations

80. As discussed above, Nike alleges that StockX “has knowingly used and continues to use” Nike’s trademarks in commerce “in connection with the sale, distribution, and advertising of its Vault NFTs,” “create[ing] confusion in the marketplace” and “generat[ing] ill-gotten profits” from the use of those trademarks without Nike’s authorization.²³⁴ Nike also alleges that StockX has “falsely and/or misleadingly claim[ed] that all Nike products sold on StockX’s platform are ‘100% Verified Authentic’” despite the fact that StockX has sold counterfeit Nike products.²³⁵ According to Nike’s Amended Complaint, StockX used false and misleading representations “to take advantage of Nike’s immense goodwill and to induce consumers to purchase Nike shoes on the StockX platform.”²³⁶ In sum, Nike alleges that “StockX has obtained gains, profits, and advantages as a result of its wrongful acts and will continue to do so.”²³⁷

²³³ See, e.g., Parisi, D., “The Rise of Authentication Has Curbed the Flow of Counterfeits to Fashion Resellers,” Glossy, June 6, 2019, available at <https://www.glossy.co/fashion/the-rise-of-authentication-has-curbed-the-flow-of-counterfeits-to-fashion-resellers/>, accessed May 1, 2023; Panzarino, M., “eBay Takes a Bite at StockX and GOAT with Sneaker Authentication for Sales \$100+ in the US,” October 12, 2020, available at <https://techcrunch.com/2020/10/12/ebay-takes-a-bite-at-stockx-and-goat-with-sneaker-authentication-for-sales-100-in-the-u-s/>, accessed May 3, 2023.

²³⁴ Amended Complaint, ¶¶ 2, 125.

²³⁵ Amended Complaint, ¶ 173.

²³⁶ Amended Complaint, ¶ 174.

²³⁷ Amended Complaint, ¶¶ 131, 147.

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B. [REDACTED]

81. While Nike claims that StockX has profited from its allegedly wrongful acts,²³⁸ [REDACTED]

[REDACTED]. Moreover, as I explain below, willfully allowing sales of counterfeit products would increase the risk of StockX incurring additional costs, [REDACTED] jeopardizing the viability of its platform in the long run.

1. [REDACTED]

82. According to StockX’s financial documents, from Q1 2020 through Q3 2022²³⁹ StockX generated approximately [REDACTED] in total worldwide revenues,²⁴⁰ including [REDACTED] [REDACTED] in revenues from trades involving Nike and Jordan products and Vault NFTs for Nike products.²⁴¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²³⁸ Amended Complaint, ¶¶ 131, 147.

²³⁹ I understand that Q1 2020 to Q3 2022 constitutes the at-issue period in this case. However, certain financial information has only been provided to me for the period Q3 2020 to Q1 2022. As a result, certain of my analyses focus only on the period Q3 2020 to Q1 2022.

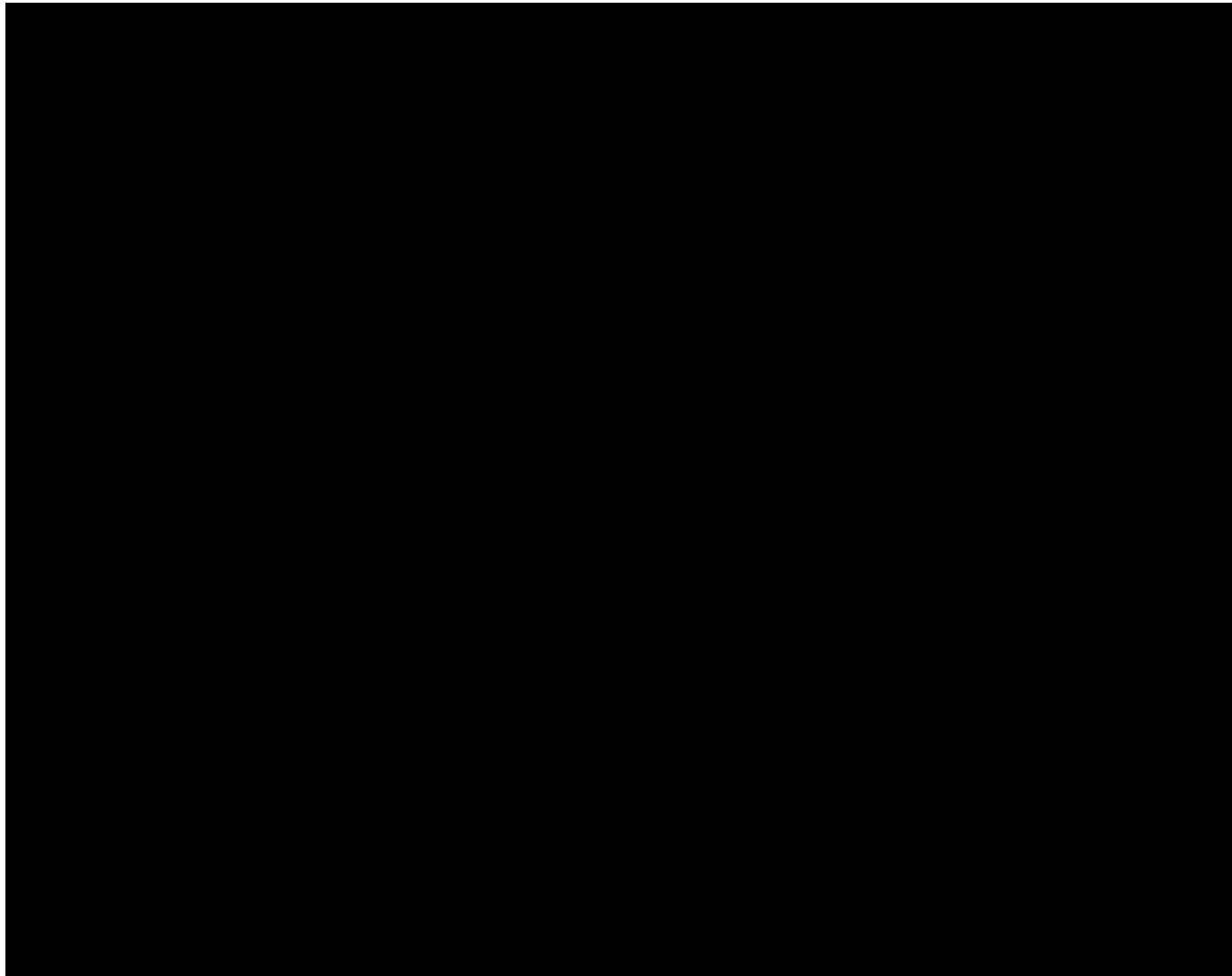
²⁴⁰ Exhibit 5A.

²⁴¹ Exhibit 5B.

²⁴² Exhibit 5A.

²⁴³ Exhibit 5A.

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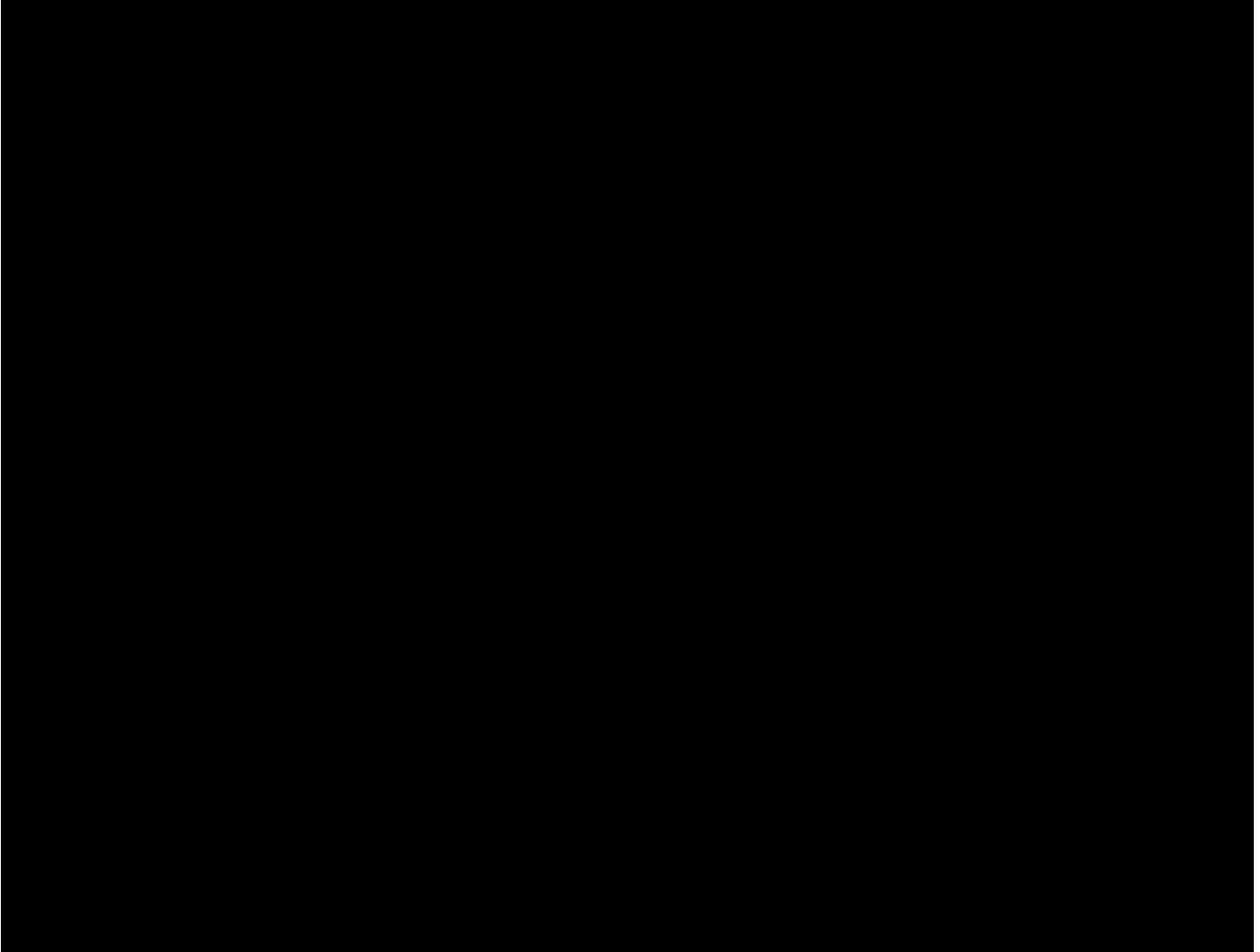
83. Further, adjusting the operating profits/losses to account for depreciation to obtain StockX’s adjusted earnings before interest, taxes, depreciation, and amortization (“Adjusted EBITDA”—the profitability metric utilized by StockX—[REDACTED]
[REDACTED]
[REDACTED] (see Figure 2).²⁴⁵ The lost earnings before interest, taxes, depreciation, and

²⁴⁴ Exhibit 5A. Data on Adjusted EBITDA are available from Q3 2020 to Q1 2022. *See also*, Huber Deposition, at p. 96.

²⁴⁵ Exhibit 5A. Data on Adjusted EBITDA are available from Q3 2020 to Q1 2022.

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amortization over the quarters for which data are available totaled approximately [REDACTED], and constituted up to [REDACTED] of revenues earned by StockX over this period, as shown in Figure 3 (i.e., as shown in Figure 3, the quarterly adjusted EBITDA margin varied between - [REDACTED] and [REDACTED] over the period Q3 2020 to Q1 2022 for which the data are available).²⁴⁶



²⁴⁶ Exhibit 5A. Adjusted EBITDA margin is calculated as adjusted EBITDA divided by total revenue in each quarter. Note that data on Adjusted EBITDA are available from Q3 2020 to Q1 2022.

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[REDACTED]

84. [REDACTED]

[REDACTED]

2. StockX would be harmed by the sale of counterfeit products on its platform

a. StockX bears the cost of product returns

85. [REDACTED]

[REDACTED] StockX would stand to lose [REDACTED] money from willfully allowing sales of counterfeit products. StockX will fully refund a buyer in the unlikely event the buyer mistakenly receives a counterfeit product (or any other product that is not what the buyer expected to

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receive).²⁴⁷ StockX currently codifies this policy in its “Buyer Promise,” which states that if a customer purchases a product (e.g., a pair of sneakers) and upon receipt believes it is not the product they expected (e.g., because the product is of the wrong size, has a defect, or is not genuine), they can report the issue.²⁴⁸ If StockX confirms that they incorrectly verified the product that was shipped to the buyer, StockX will refund the customer out of its own pocket, and does not recoup that cost from the original seller.²⁴⁹ As StockX’s average revenue per trade constituted [REDACTED]

[REDACTED] to [REDACTED] of the average order value (AOV) over the period Q3 2020 to Q1 2022 for which the data are available, allowing sales of counterfeit products would result in a direct loss to StockX upon the buyer’s return of the product.²⁵⁰

b. StockX risks reputational harm from failure to guard against counterfeits on its platform

86. Were it to fail to guard against sales of counterfeits, StockX would risk losing the trust of its customers and tarnishing its reputation among buyers,²⁵¹ which could ultimately

²⁴⁷ See, e.g., “What Is the StockX’s Buyer Promise?” StockX, April 17, 2023, available at <https://stockx.com/help/articles/What-is-The-StockX-Buyer-Promise>, accessed April 18, 2023; Huber Deposition, at p. 246 (“If a customer contacts our customer service with an issue, and we are able to validate their issue, we take that item back as a return. We refund them their money.”).

²⁴⁸ The StockX Buyer Promise states that customers must submit a report within three days of receipt (consistent with GOAT’s policy, discussed above), although StockX more recently adjusted that to ten days. See, e.g., “What Is the StockX’s Buyer Promise?” StockX, April 17, 2023, available at <https://stockx.com/help/articles/What-is-The-StockX-Buyer-Promise>, accessed April 18, 2023 and May 5, 2023.

²⁴⁹ Huber Deposition, at p. 246; “What Is the StockX’s Buyer Promise?” StockX, April 17, 2023, available at <https://stockx.com/help/articles/What-is-The-StockX-Buyer-Promise>, accessed April 18, 2023.

²⁵⁰ That is, the cost of the refund will likely exceed StockX’s gains from trade. See Exhibit 5A.

²⁵¹ As stated in StockX’s “Buyer Promise,” StockX’s goal has always been to provide customers with access to “the most sought after products without the fear of receiving incorrect or inauthentic goods.” “What Is the StockX’s Buyer Promise?” StockX, April 17, 2023, available at <https://stockx.com/help/articles/What-is-The-StockX-Buyer-Promise>, accessed April 18, 2023.

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jeopardize the viability of its platform as a business.²⁵² Platforms such as StockX that allow buyers and sellers to exchange goods or services constitute a two-sided marketplace.²⁵³ Unlike sellers, buyers on two-sided platforms do not possess full information about the goods or services that are being offered and can be uncertain about their purported quality and characteristics, as sellers can choose not to reveal a defect or to misrepresent an item.²⁵⁴ Due to the possibility of such bad behavior, building “enough trust to facilitate transactions between strangers” has become an important goal and a challenge for the designers of two-sided marketplaces.²⁵⁵ According to one academic publication, online marketplaces like eBay and Amazon “cannot exist without trust. Buyers [utilizing these two-sided platforms] need to trust that sellers are accurately describing products or services and fulfilling transactions as promised. Sellers need to trust that buyers will pay”²⁵⁶ Thus, for a two-sided marketplace to flourish, “it is necessary that both sides of the market trust each other, and for that, they need to have safeguards that alleviate the problems caused by asymmetric information.”²⁵⁷

²⁵² See, e.g., Puthiyamadam, T., and J. Reyes, “Experience Is Everything: Here’s How to Get It Right,” PwC, 2018, available at <https://www.pwc.com/us/en/advisory-services/publications/consumer-intelligence-series/pwc-consumer-intelligence-series-customer-experience.pdf>, at p. 3.

²⁵³ See, e.g., Makkonen, J., “Two-Sided Marketplace,” ShareTribe, February 22, 2021, available at <https://www.sharetribe.com/how-to-build/two-sided-marketplace/#what-is-a-two-sided-marketplace>, accessed April 18, 2023. Other examples of two-sided platforms include Airbnb, Uber, and eBay.

²⁵⁴ Tadelis, S., “Reputation and Feedback Systems in Online Platform Markets,” *Annual Review of Economics*, Vol. 8, 2016, pp. 321-340, at pp. 322-324.

²⁵⁵ Luca, M., “Designing Online Marketplaces: Trust and Reputation Mechanisms,” *Innovation Policy and the Economy*, Vol. 17, No. 1, 2017, pp. 77-93, at p. 77.

²⁵⁶ Luca, M., “Designing Online Marketplaces: Trust and Reputation Mechanisms,” *Innovation Policy and the Economy*, Vol. 17, No. 1, 2017, pp. 77-93, at p. 77.

²⁵⁷ Tadelis, S., “Reputation and Feedback Systems in Online Platform Markets,” *Annual Review of Economics*, Vol. 8, 2016, pp. 321-340, at p. 322. “Asymmetric information” implies that one party in a transaction possesses more information than the other party.

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87. To help facilitate trust between buyers and sellers, operators of two-sided platforms often choose to act as regulatory bodies by imposing standards on sellers in order to spare the buyers the problems caused by asymmetric information (or what economists call “negative externalities”).²⁵⁸ An example of a regulatory mechanism designed to reduce bad behavior, minimize negative externalities, and build trust among users is the establishment of rules and regulations and the design of detection mechanisms to uncover violations.²⁵⁹ As evidenced by the testimony of Mr. Huber, StockX’s verification process was established to prevent the sale of items that do not match customer’s expectations (including receiving inauthentic products) and serves the purpose of limiting bad behavior and building trust among users.²⁶⁰

88. Allowing the widespread sale of counterfeit goods on a platform such as StockX will undermine the trust in that platform and, as a result, will likely lead to fewer trades over time. In fact, research suggests that poor outcomes (*i.e.*, transactions on an online platform that result in poor outcomes for the buyer) may cause a buyer to update their belief about the quality of sellers

²⁵⁸ Luca, M., “Designing Online Marketplaces: Trust and Reputation Mechanisms,” *Innovation Policy and the Economy*, Vol. 17, No. 1, 2017, pp. 77-93, at p. 77; Rochet, J.C., and J. Tirole, “Two-Sided Markets: An Overview,” *Working Paper*, 2004, at p. 38.

²⁵⁹ See Evans, D.S., “Governing Bad Behavior by Users of Multi-Sided Platforms,” *Berkeley Technology Law Journal*, Vol. 27, 2012, pp. 1201-1250, at pp. 1218-1219.

²⁶⁰ Huber Deposition, at pp. 17-19 (“[P]rior to the founding of StockX, it was very difficult to transact in limited edition sneakers, other collectibles, in a safe way. ... [I]f you wanted to purchase these shoes ... you would literally agree through private messages and, believe it or not, send a money order to a stranger on the Internet and hope that you were going to receive product, hope the product you were going to receive were -- that you received was what was promised. ... The radical difference with StockX is that we first organized that purchasing experience, and then injected our verification process in the middle. So instead of having to remediate issues after the fact, there was a single unbiased party, StockX, that sat in the middle of that transaction. And in order to provide that experience, we had to create a verification process. And our verification process is our own proprietary process with standards that we’ve created to determine what items are or are not eligible to be sold on our platform, based on that process we created.”).

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on the platform and, consequently, abandon the platform.²⁶¹ Given the impact the seller’s behavior may have on its reputation, a platform like StockX that seeks to encourage repeated purchases among buyers is incentivized to be “picky in the selection of sellers” to protect its reputation and customer base and, when mistakes occur, to make the buyer whole through a refund of the purchase.²⁶² Platforms like StockX are incentivized to deliver on any promises they make to the buyers (e.g., inspecting goods and, if mistakes in that inspection are discovered, refunding the purchase). According to Hamilton Powell, Founder and CEO of Crown & Caliber, an online resale marketplace for luxury watches which also inspects products for authenticity, “the hardest thing to create is trust.”²⁶³ Research shows that consumers are unlikely to take advertising claims from online marketplaces at face value, and will choose to trust and transact on the platform if they have

²⁶¹ Nosko, C., and S. Tadelis, “The Limits of Reputation in Platform Markets: An Empirical Analysis and Field Experiment,” *National Bureau of Economic Research Working Paper Series*, 2015, at pp. 1-2. *See also*, Puthiyamadam, T., and J. Reyes, “Experience Is Everything: Here’s How to Get It Right,” PwC, 2018, available at <https://www.pwc.com/us/en/advisory-services/publications/consumer-intelligence-series/pwc-consumer-intelligence-series-customer-experience.pdf>, at p. 3.

²⁶² Rochet, J.C., and J. Tirole, “Two-Sided Markets: An Overview,” *Working Paper*, 2004, at p. 39; Nosko, C., and S. Tadelis, “The Limits of Reputation in Platform Markets: An Empirical Analysis and Field Experiment,” *National Bureau of Economic Research Working Paper Series*, 2015, at pp. 1-2; Luca, M., “Designing Online Marketplaces: Trust and Reputation Mechanisms,” *Innovation Policy and the Economy*, Vol. 17, No. 1, 2017, pp. 77-93, at p. 77; Puthiyamadam, T., and J. Reyes, “Experience Is Everything: Here’s How to Get It Right,” PwC, 2018, available at <https://www.pwc.com/us/en/advisory-services/publications/consumer-intelligence-series/pwc-consumer-intelligence-series-customer-experience.pdf>, at p. 3. *See also*, Deposition of Roy Kim, February 8, 2023 (“Kim Deposition”), at pp 23-31, 157. (Mr. Roy Kim, a sneaker collector who has bought around 5,000 pairs of shoes from StockX and spent “over a million dollars” on purchases from this platform, testified that on one occasion when he had purchased a few pairs of sneakers from StockX which turned out to be counterfeits, he was able to easily make a return and receive a refund. “[O]nce they [StockX] received the shoes and verified that, you know, they were fake, it was easy for me to return. They sent me a bunch of shipping label and I sent the shoes back with them.” Mr. Kim testified that he continues to use StockX and has bought over a thousand pairs of sneakers, with “[n]inety percent plus” being Nike, since July 2022 (around the time that he received the counterfeit sneakers and had to return them.))

²⁶³ Parisi, D., “The Rise of Authentication Has Curbed the Flow of Counterfeits to Fashion Resellers,” Glossy, June 6, 2019, available at <https://www.glossy.co/fashion/the-rise-of-authentication-has-curbed-the-flow-of-counterfeits-to-fashion-resellers/>, accessed May 1, 2023.

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a good reason to believe that the seller on the platform will act honestly.²⁶⁴ As the sellers on StockX are anonymous to buyers (although sellers’ identities are known to StockX, since it collects fees from sellers), StockX earns its customers’ trust by ensuring that buyers receive the goods they expect.

C. Numerous Factors Have Contributed to StockX’s Popularity That Are Unrelated to the Allegations in This Case

89. According to a former StockX executive, the foundational idea behind StockX was to “apply the mechanics of the stock market to everyday consumer products” and “to create a marketplace that is completely innovative in the way demand and supply meet[], and the way pricing is set.”²⁶⁵ StockX’s founders applied this idea to “high-demand products, of current culture, with a real scarcity, traded in real-time,” which has become an important distinguishing factor for the platform.²⁶⁶ As discussed above, sellers submit asking prices, buyers bid on the products, and

²⁶⁴ Tadelis, S., “Reputation and Feedback Systems in Online Platform Markets,” *Annual Review of Economics*, Vol. 8, 2016, pp. 321-340, at p. 325 (“The key idea here is that today’s actions will lead to future consequences that affect the prospects of the seller, hence keeping him in check. As it turns out, this powerful mechanism may work even if the seller does not interact repeatedly with the same buyer. If the seller understands that his current actions will be revealed to all future buyers and not just his current buyer, and that his good behavior today will be rewarded by future business just as bad behavior will be penalized by a lack of future business, then the seller will have an incentive to act in good faith (in this case, to ship the item). The buyer thus will have good reason to trust that the seller will act honestly, and will therefore choose to trust and transact with him.”); Elfenbein, D.W., R. Fisman, R., and B. McManus, “Does Cheap Talk Affect Market Outcomes? Evidence from eBay,” *American Economic Journal: Applied Economics*, Vol. 11, No. 4, 2019, pp. 305-326, at pp. 307-308. See also, eBay 2022 10-K, at p. 11. (“Failure to deal effectively with fraudulent activities on our websites would increase our loss rate and harm our business, and could severely diminish consumer confidence in and use of our services.”).

²⁶⁵ Gilliland, N., “StockX: Gen Z Consumers Are Looking for Meaning and Relaxed About ‘Exploring Nontraditional Retail Channels,’” Econsultancy, October 11, 2021, available at <https://econsultancy.com/stockx-gen-z-consumers-are-looking-for-meaning-and-relaxed-about-exploring-non-traditional-retail-channels/>, accessed April 7, 2023.

²⁶⁶ Gilliland, N., “StockX: Gen Z Consumers Are Looking for Meaning and Relaxed About “Exploring Nontraditional Retail Channels”,” Econsultancy, October 11, 2021, available at <https://econsultancy.com/stockx-gen-z-consumers-are-looking-for-meaning-and-relaxed-about-exploring-non-traditional-retail-channels/>, accessed April 7, 2023; Pang, K., “StockX – Trading Exchange for

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when the bid and ask coincide the sale is considered finalized, pending verification of the shipped item by StockX.²⁶⁷ To facilitate transactions, StockX provides users with a variety of data, such as historical sale figures and price volatility for each product.²⁶⁸ According to Scott Cutler, the CEO of StockX, “the value proposition for our customers is access to that [scarce] product, access at a transparent price, access at its market price, and to be able to access product[s] that, quite frankly, you’re most likely not going to get from the brand or any of its retail distribution channels.”²⁶⁹ Similarly, according to a former CEO of AOL and one of the investors in StockX, the platform was “centered on giving average consumers access to scarce luxury goods, which are often scooped up by insiders, [and while there’s] no guarantee those consumers will be able to afford the items, … the prices will at least be fairer.”²⁷⁰

90. While authenticity is one factor that may drive consumer purchase decisions of sneakers and other such culture items,²⁷¹ other variables similarly factor into the consumer purchase

Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submission/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023.

²⁶⁷ Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023.

²⁶⁸ Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023.

²⁶⁹ Bain, M., “For StockX Selling Sneakers Is Just the Beginning,” May 8, 2021, Quartz, available at <https://qz.com/2005457/for-stockx-selling-jordans-is-just-the-beginning>, accessed May 3, 2023.

²⁷⁰ Hyman, D., “A Nasdaq for Sneakerheads? StockX Aims to Tame ‘Chaos’ of Luxury Market,” The New York Times, July 6, 2018, available at <https://www.nytimes.com/2018/07/06/business/smallbusiness/stockx-sneakerheads-luxury-goods.html>, accessed May 3, 2023.

²⁷¹ Evidence suggests that consumers may not expect or demand a platform with a perfect verification system, but one where, when mistakes occur, buyers are made whole. For example, Mr. Roy Kim, a sneaker collector who has bought around 5,000 pairs of shoes from StockX and spent “over a million dollars” on purchases from this platform, testified that on one occasion when he had purchased a few pairs of sneakers

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decision making process (*e.g.*, speed of delivery, scarcity of the product, value for the price).²⁷² As I discuss below, in addition to verifying that the products sold through its platform meet its standards, StockX endeavors to attract sellers of hard-to-find products, and provides access to rich pricing data, as well as a quality shopping experience, all variables that contribute to StockX’s popularity.²⁷³

1. StockX offers its specialized consumer base an opportunity to purchase “rare” products

91. StockX’s core consumer base is comprised of young individuals with “behaviors [that] are rooted in more than just standard consumerism,” because they “seek out products for their significance, and for the fact that owning and probably wearing those products indicates a

from StockX which turned out to be counterfeits, he was able to easily make a return and receive a refund. “[O]nce they [StockX] received the shoes and verified that, you know, they were fake, it was easy for me to return. They sent me a bunch of shipping label and I sent the shoes back with them.” Mr. Kim testified that he continues to use StockX and has bought over a thousand pairs of sneakers, with “[n]inety percent plus” being Nike, since July 2022 (around the time that he received the counterfeit sneakers and had to return them.)). Kim Deposition, at pp 23-31, 157.

²⁷² STX0021868-951, at 894, 897.

²⁷³ See, e.g., STX0021868-951, at 872-875, 894, 897, 912; STX0092496-544, at 499, 501, 512-516, 533-535 (Based on November 2019 survey, style/look, product quality, value for the price, and comfort were shown to be top purchase drivers for consumers deciding which “sneaker, apparel, fashion accessories to purchase.” The same survey also showed that those familiar with StockX indicated that the top three associations with the platform were “For serious collectors/enthusiasts,” “Access to unique, hard to find goods,” and “Super easy-to-use.” When asked about most appealing features of StockX in a November 2020 survey, StockX performed strongest on “easy to use,” “great customer service,” “open exchange,” and “for discovery.”); Mondalek, A., “Why StockX Might Really Be Worth \$1 Billion,” Vogue Business, June 28, 2019, available at <https://www.voguebusiness.com/technology/stockx-sneaker-resale-market-streetwear>, accessed April 7, 2023; Gilliland, N., “StockX: Gen Z Consumers Are Looking for Meaning and Relaxed About ‘Exploring Nontraditional Retail Channels.’” Econsultancy, October 11, 2021, available at <https://econsultancy.com/stockx-gen-z-consumers-are-looking-for-meaning-and-relaxed-about-exploring-non-traditional-retail-channels/>, accessed April 7, 2023; Pang, K., “StockX – Trading Exchange for Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submit/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023.

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certain belonging or adherence to a cultural sphere.”²⁷⁴ The results of a November 2019 U.S. consumer survey²⁷⁵ suggest that StockX’s consumers identify as a “highly discriminating and very selective audience.”²⁷⁶ The survey suggests that almost half of StockX customers seek to be fashion trendsetters,²⁷⁷ and that the top purchase drivers for sneakers and other collectibles among StockX users include “[s]tyle/look,” “[v]ersatility,” and “authenticity.”²⁷⁸ Similar findings are reported in a 2020 U.S. consumer survey,²⁷⁹ where “style/look,” “product quality,” and “comfort” have been selected as the top purchase drivers among StockX customers.²⁸⁰

92. Thus, StockX’s business is, at least partly, driven by a community of collectors “who see rare sneakers as investment assets.”²⁸¹ Relative to other e-commerce platforms, StockX

²⁷⁴ Gilliland, N., “StockX: Gen Z Consumers Are Looking for Meaning and Relaxed About “Exploring Nontraditional Retail Channels”,” Econsultancy, October 11, 2021, available at <https://econsultancy.com/stockx-gen-z-consumers-are-looking-for-meaning-and-relaxed-about-exploring-non-traditional-retail-channels/>, accessed April 7, 2023.

²⁷⁵ The survey was conducted “across a target audience” meeting the following demographic characteristics: Geography (nationwide U.S. balanced across the four regions of the country); Gender mix (enforced the quota of 60 percent male and 40 percent female); Age (consumers between ages 15 and 44, enforcing the quota of a third under the age of 25, a third between the ages of 25 and 34, and a third between the ages of 35 and 44); Ethnicity (enforced the quota of a maximum of 60 percent Caucasian). Respondents were also screened for “recent (at least once in past year) sneaker purchasers,” excluding the “[e]xtreme low-end sneaker purchasers (<\$50).” Finally, an allowance of “no more than 20% of total sample” for non-sneaker purchasers was applied; “however, they had to be customers in other core StockX product categories in order to qualify (streetwear, bags, or watches).” *See* STX0021868-951, at 869.

²⁷⁶ STX0021868-951, at 874.

²⁷⁷ STX0021868-951, at 893.

²⁷⁸ STX0021868-951, at 897.

²⁷⁹ This 2020 survey was designed as a follow-up study to the 2019 consumer survey and was conducted during the exact same time period of October 30 through November 3 and 4. The sample selection for the 2020 study also mirrored the 2019 study, and included the following criteria: Geography (nationwide U.S. balanced across the four regions of the country); Gender mix (enforced the quota of 60 percent male and 40 percent female); Age (consumers between ages 15 and 44, enforcing the quota of a third under the age of 25, a third between the ages of 25 and 34, and a third between the ages of 35 and 44); Ethnicity (enforced the quota of a maximum of 60 percent Caucasian). Respondents were also screened for “recent (at least once in past year) sneaker purchasers,” excluding the “[e]xtreme low-end sneaker purchasers (<\$50).” *See* STX0092496-544, at 497.

²⁸⁰ STX0092496-544, at 515.

²⁸¹ Marikar, S., “The Founder of StockX Turned His Hobby into a Billion-Dollar Business in 3 Years. Then

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is considered to be for “serious collectors” who want to have “objects of rarity.”²⁸² In fact, the results of a November 2019 U.S. consumer survey suggest that among those consumers who are very familiar with the platform, the top two attributes associated with StockX are “[f]or serious collectors/enthusiasts” and “[a]ccess to unique, hard to find goods.”²⁸³ The same survey suggests that, compared to “other sneaker/fashion online buy-sell marketplaces,” StockX is considered to be unique by 89 percent of respondents, in part because of its ability to offer “a big supply of sneakers even rare sneakers that some other companies don’t have.”²⁸⁴ Similarly, according to a 2020 survey of U.S. consumers familiar with the StockX platform, “unique,” “cool,” “trendy,” and “modern” best describe the personality or culture of StockX.²⁸⁵ Notably, not every pair of sneakers can be listed for sale on StockX, with the company “carefully curat[ing] the scope of items that can be listed on the platform [and] facilitating product discovery for buyers.”²⁸⁶

He Turned over the Reins. Now What?” Inc. Magazine, December 17, 2019, <https://www.inc.com/magazine/202002/sheila-marikar/stockx-josh-luber-sneaker-resale-marketplace-scott-cutler-detroit-founder-ceo.html>, accessed May 2, 2023.

²⁸² STX0021868-951, at 872-873.

²⁸³ STX0021868-951, at 912. *See also*, STX0092496-544, at 534, suggesting that 83 percent of StockX customers surveyed in 2020 indicated that StockX performed “Very well” or “Somewhat well” on “Access to unique, hard to find [goods].” “Super easy to use,” “Great customer service,” and “Open exchange process” were similarly well-regarded by 84 percent of StockX customers. As well, 83 percent of StockX customers indicated that StockX performed “Very well” or “Somewhat well” on “For discovery,” “Trustworthy,” and “Elegant / design-centric” features.

²⁸⁴ STX0021868-951, at 916, 918.

²⁸⁵ STX0092496-544, at 537.

²⁸⁶ Pang, K., “StockX – Trading Exchange for Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submit/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023. *See also*, STX0092496-544, at 501 (“StockX performs strongest today on being easy to use, having great customer service, being representative of the open exchange process, and for discovery – a place to find new things.”).

HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY**2. StockX provides price transparency**

93. Manufacturers like Nike and adidas will often limit the production of certain products to “create hype about their sneaker design.”²⁸⁷ By providing users with historical pricing data, once exclusive to large resellers, StockX obviates the need for users to rely on “guesswork” when pricing products and facilitates consumers’ understanding of the scarcity of the products.²⁸⁸ As one article has pointed out:²⁸⁹

By bringing price transparency to the market, StockX has become the industry benchmark to quantify this artificial scarcity, thereby cementing its position as the arbiter of cool in a market where cool is currency. Ironically, as these sneakers are aspirational goods, it is often the price that signals scarcity instead of vice versa. Some sneakerheads would pay \$500 for a pair of shoes because of its price, not in spite of it.”

94. According to StockX’s former General Manager, International, Mr. Olivier Van Calster, the transparency about trends of trades over time and the visibility around pricing data have made StockX’s website “a treasure-trove of information” for which their customers have

²⁸⁷ Pang, K., “StockX – Trading Exchange for Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submission/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023.

²⁸⁸ Mondalek, A., “Why StockX Might Really Be Worth \$1 Billion,” Vogue Business, June 28, 2019, available at <https://www.voguebusiness.com/technology/stockx-sneaker-resale-market-streetwear>, accessed April 7, 2020; Gilliland, N., “StockX: Gen Z Consumers Are Looking for Meaning and Relaxed About ‘Exploring Nontraditional Retail Channels,’” Econsultancy, October 11, 2021, available at <https://econsultancy.com/stockx-gen-z-consumers-are-looking-for-meaning-and-relaxed-about-exploring-non-traditional-retail-channels/>, accessed April 7, 2023; Pang, K., “StockX – Trading Exchange for Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submission/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023.

²⁸⁹ Pang, K., “StockX – Trading Exchange for Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submission/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023.

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tremendous appreciation.²⁹⁰ Further, StockX’s transparency over transaction data helps level the playing field for novice traders (*e.g.*, younger sneakerheads) against veteran traders.²⁹¹ The visibility into pricing history and trade transparency coupled with StockX’s simplicity and ease of use have helped the platform attract users.²⁹² According to the findings of the 2020 survey of U.S. consumers discussed earlier, 78 percent of StockX customers indicated that StockX performs “Very well” or “Somewhat well” on “Transparency of pricing.”²⁹³

3. StockX strives to provide a quality shopping experience

95. Market research suggests that customer experience is an important brand differentiator and a driver of sales.²⁹⁴ For e-commerce resale platforms such as StockX, the elevation of customer experience to a level “more comparable to luxury retail” has become an important demand driver.²⁹⁵ StockX in particular appears to have an advantage in providing a more

²⁹⁰ Gilliland, N., “StockX: Gen Z Consumers Are Looking for Meaning and Relaxed About “Exploring Nontraditional Retail Channels”,” Econsultancy, October 11, 2021, available at <https://econsultancy.com/stockx-gen-z-consumers-are-looking-for-meaning-and-relaxed-about-exploring-non-traditional-retail-channels/>, accessed April 7, 2023.

²⁹¹ Pang, K., “StockX – Trading Exchange for Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submission/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023 (“Price transparency levels the playing field for novice sneakerheads to transact fairly with veterans. No longer does price information asymmetry allow veterans with expert knowledge take advantage of novices – buyers and sellers may simply look at the price of a pair of sneakers to assess its scarcity”).

²⁹² Pang, K., “StockX – Trading Exchange for Sneakers,” Digital, Data, and Design Institute at Harvard, October 16, 2019, available at <https://d3.harvard.edu/platform-digit/submission/stockx-trading-exchange-for-sneakers/>, accessed April 7, 2023; Bain, M., “For StockX Selling Sneakers Is Just the Beginning,” May 8, 2021, Quartz, available at <https://qz.com/2005457/for-stockx-selling-jordans-is-just-the-beginning>, accessed May 3, 2023.

²⁹³ STX0092496-544, at 534.

²⁹⁴ Puthiyamadam, T., and J. Reyes, “Experience Is Everything: Here’s How to Get It Right,” PwC, 2018, available at <https://www.pwc.com/us/en/advisory-services/publications/consumer-intelligence-series/pwc-consumer-intelligence-series-customer-experience.pdf>, at pp. 5, 8.

²⁹⁵ See, *e.g.*, Parisi, D., “How Sneaker Resellers Are Elevating the Shopping Experience,” Glossy, December 21, 2018, available at <https://www.glossy.co/fashion/how-sneaker-resellers-are-elevating-the-shopping-experience/>, accessed April 9, 2023.

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satisfactory customer experience overall, compared to its close competitors such as GOAT.²⁹⁶ The results of the November 2019 U.S. consumer survey discussed above indicate a very high level of general customer satisfaction (94 percent) among StockX users.²⁹⁷ Among those who are very familiar with StockX, 31 percent of respondents indicated that the platform is “[s]uper easy-to-use” (placing this attribute among the top-three attributes associated with the brand/company).²⁹⁸ In addition, the results of the aforementioned 2020 U.S. consumer survey suggest that StockX customers find its ease of use and “[g]reat customer service” to be among its top three most appealing features.²⁹⁹

V. Conclusion

96. My analysis may change before trial if additional information from any of the parties-in-suit or their experts becomes available. I, therefore, reserve the right to supplement my report accordingly.



Robert L. Vigil, Ph.D.

²⁹⁶ STX0021868-951, at 872. *See also*, Kim Deposition, at p. 113 (Mr. Kim, who is a sneaker collector and a customer of both StockX’s and GOAT’s, testified that he prefers the customer experience at StockX to customer experience at GOAT. “Q. And I believe you mentioned earlier that you prefer the customer experience at StockX to the customer experience at GOAT; is that right? A. That is true, yes. Q. And is the experience with customer service one of the factors that leads to that conclusion? A. It is. Q. Okay. So you[r] experience with customer service at StockX in your opinion was better than at GOAT? A. Yes, by a mile. Q. Can you elaborate on why -- on why that is? A. Yeah, GOAT will sometimes not respond to tickets for weeks. I’ve had issues where I’ve taken two to three weeks of continuously emailing them to resolve an issue. With StockX, generally speaking, I get a response within one or two business days and most of my issues are resolved to my satisfaction[.]”).

²⁹⁷ STX0021868-951, at 925.

²⁹⁸ STX0021868-951, at 912.

²⁹⁹ STX0092496-544, at 535. *See also*, Kim Deposition, at p. 31 (“Their customer service is generally pretty good [...] Generally, they are responsive to any issues that I have as a buyer or a seller within 24 hours.”).

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EXHIBIT 1
ROBERT L. VIGIL, PH.D., CLP
Principal

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Washington, DC 20006

Dr. Vigil specializes in the application of economics and finance to complex commercial litigation matters. His work includes the estimation of damages and unjust enrichment in intellectual property (IP), breach of contract, and false advertising cases; the evaluation of patented drug products' commercial success in connection with generic manufacturers' Abbreviated New Drug Application submissions to obtain early market entry; and the analysis of issues related to the granting of permanent injunctions, such as irreparable harm and causal nexus. Dr. Vigil has also analyzed issues related to domestic industry, remedy, and bonding on cases before the International Trade Commission.

Dr. Vigil has served as an expert witness on litigation matters in a variety of industries, including pharmaceuticals, medical devices, consumer products, telecommunications, computer hardware and software, and electronics. In non-litigation matters, he has assisted clients in valuing IP for sale or license; identifying and evaluating potential partners for licensing, acquisition, or divestiture of assets; and analyzing the impact of generic entry on prices and market shares of brand name pharmaceutical products.

Dr. Vigil is a member of the American Economic Association, the American Marketing Association, and the Licensing Executives Society, and is a frequent speaker on issues related to IP, valuation, and damages assessment. He has also taught courses in microeconomics and econometrics at the University of Maryland.

EDUCATION

1998	Ph.D., economics, University of Maryland <i>Specialization: applied microeconomics, econometrics</i>
1990	B.A., economics (<i>summa cum laude</i>), Pepperdine University

CERTIFICATIONS

2008	Certified Licensing Professional (CLP), Licensing Executive Society
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PROFESSIONAL EXPERIENCE

1998–Present	Analysis Group, Inc.
1998	Penta Advisory Services LLC
1997	Hickling Lewis Brod, Inc
1995–1997	Department of Economics, University of Maryland <i>Instructor and Research Assistant</i>

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EXPERT TESTIMONY

- ***Pedro Martin and Magala Martin v. Wave Neuroscience, Inc.***
JAMS Reference # 1200059206
Breach of Contract: expert report regarding the amount of royalties that should have been paid to Wave Neuroscience, Inc. under certain assumptions, issues related to whether and when the Martins “recovered” their initial investment, and the extent of lost profit damages suffered by the Martins due to Wave Neuroscience, Inc.’s alleged breach of contract.
- ***Proslide Technology Inc. v. Whitewater West Industries, Ltd.***
US District Court, Middle District of Florida, Orlando Division (Case No. 6:20-cv-02189-CEM-DCI)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of patents involving water slide technologies and the total profits related to the article of manufacture involving design patents involving water slide features.
- ***Advanced Magnesium Alloys Corporation d/b/a AMACOR v. Alain Dery, Alliance Magnesium Inc., and Wogen Resources America, LLC***
US District Court, Southern District of Indiana (Case No. 1:20-cv-02247-RLY-MJD)
Breach and Aiding and Abetting of Breach of Fiduciary Duties and Trade Secret Misappropriation: deposition testimony and expert report regarding the monetary relief related to Defendants’ actions.
- ***JF Enterprises, Inc. v. King & Spalding, LLP, David J. Farber, Esq., and Seth H. Lundy, Esq.***
Superior Court for the District of Columbia, Civil Division (Case No. 2022 CA 001071 M)
Legal Malpractice: expert report regarding the damages associated with advice allegedly given related to the diabetic footwear market.
- ***C.H., et al. v. United States***
US District Court, District of Maryland (Case No. 8:20-cv-03249-TDC-TJS)
Medical Negligence/Lack of Informed Consent: expert report regarding the present value of C.H.’s alleged loss of earning capacity and potential future life care expenses.
- ***Advantest America, Inc., et al. v. Samer Kabbani, et al., et al.***
JAMS Reference # 1200057839
Breach and Aiding and Abetting of Breach of Fiduciary Duties, Breach and Aiding and Abetting of Breach of Duty of Loyalty, Breach of and Interference with Contract(s), and Unjust Enrichment: deposition testimony and expert report regarding the damages suffered by Claimants and unjust enrichment received by Respondents.
- ***Close It! Title Services, Inc., et al. v. Michael S. Nadel, et al.***
Superior Court for the District of Columbia, Civil Division (Case No. 2018-CA-005391B)
Tortious Interference With Business Relations: deposition testimony and expert report regarding the damages related to Defendants’ alleged tortious interference involving public statements allegedly made by Michael S. Nadel.
- ***Open Text Corporation and Open Text, Inc. v. SAS C***

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*Commonwealth of Massachusetts, Superior Court Department of the Trial Court, Suffolk, SS.
(Case No. 2084-CV-02578-BLS1)*

Breach of Contract and Breach of Covenant of Good Faith and Fair Dealing: expert report regarding the damages related to the alleged breach of contract and breach of the implied covenant of good faith and fair dealing by SAS C6.

▪ ***GalaxE.Solutions, Inc. v. Suresh Pande***

US District Court, Southern District of New York (Case No. 1:19-cv-04784)

Trade Secret Misappropriation and Breach of Contract: expert report regarding the damages related to the alleged misappropriation of trade secrets related to GalaxE’s IT business and the breach of a confidentiality agreement between the parties.

▪ ***Chewy, Inc. v. International Business Machines Corporation***

US District Court, Southern District of New York (Case No. 1:21-cv-01319-JSR)

Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of patents involving features and functionalities related to Chewy’s website and mobile applications.

▪ ***RFCyber Corp. v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.***

US District Court, Eastern District of Texas, Marshall Division (Case No. 2:20-cv-00335-JRG)

Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of patents related to providing, personalizing, and funding of a secure e-purse for conducting e- and m-commerce.

▪ ***TIGI Linea Corp., f/k/a TIGI Linea, L.P. v. Professional Products Group, LLC***

US District Court, Eastern District of Texas, Sherman Division (Lead Case No. 4:19-cv-00840; Consolidated Case No. 4:20-cv-87)

Fraud, Aiding and Abetting Breach of Fiduciary Duty; Conspiracy, Breach of Contract: deposition testimony and expert report regarding lost profits due to alleged breach of contract and fraudulent conduct, and disgorgement of profits from alleged fraud, aiding and abetting breach of fiduciary duty, and conspiracy.

▪ ***Edwards Lifesciences Corporation et al. v. Meril Life Sciences Pvt. Ltd. and Meril, Inc.***

US District Court, Northern District of California, Oakland Division (Case No. 4:19-cv-06593-HSG)

Trademark Infringement and Unfair Competition: deposition testimony and expert report regarding the damages related to the alleged trademark infringement and allegedly false and misleading statements regarding a transcatheter heart valve product.

▪ ***L.H. et al. v. United States***

US District Court, Southern District of Florida (Case No. 2:19-cv-14449-KMM)

Medical Malpractice/Negligence: deposition testimony and expert report regarding the present value of L.H.’s alleged loss of earning capacity and potential future life care expenses.

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- ***Uniloc 2017 LLC v. Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd.***
US District Court, Eastern District of Texas (Case No. 2:18-cv-00508-JRG)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of a patent related to anti-theft protection for a radiotelephony device.
- ***Uniloc 2017 LLC v. Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd.***
US District Court, Eastern District of Texas (Case No. 2:18-cv-00506-JRG)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of a patent related to decoding and displaying the important region of video content where there is a discrepancy in the source and display format’s aspect ratios.
- ***Adapt Pharma Operations Limited, et al. v. Teva Pharmaceuticals USA, Inc. et al.***
US District Court, District of New Jersey (Case No. 16-7721 (JLL) (JAD)
Patent Infringement: deposition and trial testimony regarding the commercial success of an invention directed to single-use, pre-primed devices adapted for nasal delivery of naloxone; formulations for intranasal administration of naloxone; and methods of treating opioid overdose and symptoms by nasally administering naloxone using those methods and devices to a patient in need thereof a therapeutically effective amount of an opioid antagonist, wherein the therapeutically effective amount is equivalent to about 2 mg to about 12 mg of naloxone hydrochloride.
- ***IQE plc v. Solar Junction Corporation***
London Court of International Arbitration (Arbitration No. 183861)
Trade Secret Misappropriation, Breach of Contract: arbitration testimony and expert report regarding the actual harm, unjust enrichment, and reasonable royalty damages relating to the trade secret misappropriation and breach of contract involving technology used to manufacture semiconductors for solar cells.
- ***In re: Premera Blue Cross Customer Data Security Breach Litigation***
US District Court, District of Oregon (Case No. 3:15-md-2633-SI)
Class action: declaration regarding the value to the class members of the injunctive relief agreed to in the settlement agreement and the value to the class members of the additional data security practices implemented from 2015 to 2018.
- ***Uniloc USA, Inc., Uniloc Luxembourg, S.A., and Uniloc 2017 LLC v. Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd.***
US District Court, Eastern District of Texas (Case No. 2:18-cv-00044-JRG-RSP)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of a patent related to the HSUPA portion of the HSPA and HSPA+ wireless communication standards.
- ***Uniloc USA, Inc., Uniloc Luxembourg, S.A., and Uniloc 2017 LLC v. Samsung Electronics America, Inc. and Samsung Electronics Co., Ltd.***
US District Court, Eastern District of Texas (Case No. 2:18-cv-00042-JRG-RSP)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of a patent related to the LTE standard.

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- ***Ethicon LLC, Ethicon Endo-Surgery, Inc., and Ethicon US LLC v. Intuitive Surgical, Inc., Intuitive Surgical Operations, Inc., and Intuitive Surgical Holdings, LLC***
US District Court, District of Delaware (Case No. 1:17-cv-871-LPS-CJB)
Patent Infringement: expert report regarding the lost profits and reasonable royalty damages related to the alleged infringement of patents related to stapling and surgical technologies.
- ***Uniloc USA, Inc., et al. v. Samsung Electronics America, Inc., et al.***
US District Court, Eastern District of Texas (Case No. 2:17-cv-00651-JRG)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of a patent related to a step counter that more accurately calculates the calorie expenditure of someone walking.
- ***ADP, LLC v John Halpin***
US District Court, District of New Jersey (Case No. 2:16-cv-01111)
Breach of Contract, Breach of Duty of Loyalty, Unfair Competition: deposition testimony and expert report regarding revenue and profit projections and present value calculations for certain ADP clients for the specified period beyond that at which these clients terminated business with ADP.
- ***ADP, LLC v Jordan Lynch***
US District Court, District of New Jersey (Case No. 2:16-cv-01053)
Breach of Contract, Breach of Duty of Loyalty, Unfair Competition: deposition testimony and expert report regarding revenue and profit projections and present value calculations for certain ADP clients for the specified period beyond that at which these clients terminated business with ADP.
- ***ADP, LLC v Jessica Trohaugh***
US District Court, District of New Jersey (Case No. 2:17-cv-00284-CCC-JBC)
Breach of Contract, Breach of Duty of Loyalty, Unfair Competition: deposition testimony and expert report regarding revenue and profit projections and present value calculations for certain ADP clients for the specified period beyond that at which these clients terminated business with ADP.
- ***Legal Technology Group, Inc. v. Rajiv Mukerji and HBR Consulting LLC***
US District Court, District of Columbia (Case No. 1:17-CV-631)
Breach of Contract, Tortious Interference: deposition testimony and expert report regarding the lost profits damages related to lost contracts and a diminished head start period.
- ***Whitewater West Industries, Ltd. v. Richard Alleshouse, Yong Yeh, and Pacific Surf Designs, Inc.***
US District Court, Southern District of California (Case No. 3:17-CV-00501-DMS-NLS)
Breach of Contract, Intentional Interference with Contract, Violation of Cal. Bus. & Prof. § 17200, *et seq.*: deposition and trial testimony and expert report regarding the reasonable royalty damages related to water ride attractions and nozzle systems used in water ride attractions.
- ***Whitewater West Industries, Ltd. v. Pacific Surf Designs, Inc.***
US District Court, Southern District of California (Case No. 3:17-CV-01118-WQH-BGS)
Patent Infringement: deposition and trial testimony and expert report regarding the reasonable royalty damages related to the alleged infringement of a patent related to a simulated wave water ride attraction having one or more flexible nozzle covers for ensuring the safety of riders and lowering the risk of interference with the ride operation.

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▪ ***Cipla Ltd., v. Sunovion Pharmaceuticals Inc.***

US District Court, District of Delaware (Case No. 1:15-CV-00424-LPS)

Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages involving a patent related to a method of making optically pure (R) and (S) salbutamol.

▪ ***Sabre GLBL, Inc., v. Melody Shan, aka Shan Melody Xiaoyun***

JAMS Reference # 1310022477

Trade Secret Misappropriation/Confidential Information, Tortious Interference, Raiding, Breach of Contract, Unfair Competition, and Breach of Duty of Loyalty: arbitration testimony and expert report regarding the head-start damages related to various causes of action involving companies providing software technology products and solutions to airlines, airports, hoteliers, and other travel suppliers.

▪ ***EHS Lens Philippines, Inc. v. Essilor International, et al.***

US District Court, Eastern District of Virginia (Case No. 3:16-CV-563-JAG)

Patent Infringement: expert report regarding the reasonable royalty damages involving a patent related to backside progressive lenses with correction for eye astigmatism.

▪ ***Heraeus Medical GmbH v. Esschem, Inc.***

US District Court, Eastern District of Pennsylvania (Case No. 2:14-CV-05169-CMR)

Trade Secret Misappropriation: deposition testimony and expert report regarding the damages related to the alleged misappropriation of trade secrets related to aspects of copolymers used in the manufacture of bone cement.

▪ ***The Medicines Company v. Biogen MA Inc.***

US District Court, District of New Jersey (Case No. 2:15-CV-07031-MCA-LDW)

Breach of Contract: deposition testimony and expert report regarding the alleged failure to pay royalties under a license agreement and the alleged breach of good faith and fair dealing under a license agreement.

▪ ***Flowrider Surf, Ltd. and Surf Waves, Ltd. v. Pacific Surf Designs, Inc.***

US District Court, Southern District of California (Case No. 3:15-CV-01879-AJB-BLM)

Patent Infringement: expert report regarding the lost profits damages related to the alleged infringement of a patent related to a simulated wave water ride attraction having one or more flexible nozzle covers for ensuring the safety of riders and lowering the risk of interference with the ride operation.

▪ ***Casper Sleep, Inc. v. Jack Mitcham and Mattress Nerd LLC***

US District Court, Southern District of New York (Case No. 1:16-CV-03224-JSR)

Lanham Act and Section 349 of the New York General Business Law: expert report regarding the impact of alleged misconduct by Jack Mitcham and Mattress Nerd LLC on consumer behavior and the monetary relief that may be owed to Casper.

▪ ***Centrak, Inc. v. Sonitor Technologies, Inc.***

US District Court, District of Delaware (Case No. 1:14-CV-00183-RGA)

Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages involving a patent related to real time location systems used in hospitals and other health care environments.

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- **Mobile Telecommunications Technologies, LLC v. Samsung Electronics Co., Ltd., et al.**
US District Court, Eastern District of Texas, Marshall Division (Case No. 2:15-CV-00183-JRG-RSP)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages involving patents related to functionalities used in smartphones, tablets, TVs, laptops, washers, dryers, and other consumer electronics products.
- **DR Distributors, LLC and CB Distributors, Inc. v. 21 Century Smoking, Inc. and Brent Duke** *US District Court, Northern District of Illinois (Case No. 3:12-CV-50324)*
Trademark Infringement: deposition testimony and expert report regarding the market penetration of trademarks related to certain brands of electronic cigarettes.
- **Brian Friedman v. Five Guys Enterprises, LLC**
Circuit Court for Fairfax County Virginia, Civil Division (Case No. 2014-12272)
Tortious Interference: deposition and trial testimony and expert report regarding the lost profits damages resulting from the tortious interference involving four Five Guys franchises.
- **Mobile Telecommunications Technologies, LLC v. Amazon.com, Inc.**
US District Court, Eastern District of Texas, Marshall Division (Case No. 2:13-CV-00883-JRG-RSP)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages involving patents related to functionalities used in smartphones and tablets.
- **Mobile Telecommunications Technologies, LLC v. Samsung Telecommunications America, LLC**
US District Court, Eastern District of Texas, Marshall Division (Case No. 2:13-CV-259-JRG-RSP)
Patent Infringement: deposition and trial testimony and expert report regarding the reasonable royalty damages involving patents related to functionalities used in smartphones and tablets.
- **US Ethernet Innovations, LLC v. Acer, Inc., et al.**
US District Court, Northern District of California, Oakland Division (Case Nos. 4:10-CV-03724 (CW)(LB) and 4:10-CV-05254 (CW)(LB))
Patent Infringement: expert report regarding the reasonable royalty damages involving patents covering certain Ethernet controller chipsets.
- **E.J. Brooks Company d/b/a TydenBrooks v. Cambridge Security Seals, et al.**
US District Court, Southern District of New York (Case No. 12-CIV-2937 (KMK))
Trade Secret Misappropriation, False Advertising, Unfair and Deceptive Business Practices, Unfair Competition, and Unjust Enrichment: deposition and trial testimony and expert report regarding the lost profits damages and disgorgement of unjust gains from alleged violations of the Lanham Act and New York statutory and common law.
- **Alpine Armoring Inc. v. Streit Manufacturing, Inc., et al.**
US District Court, Eastern District of Virginia (Case No. 1:14-CV-00197 (AJT/IDD))
Breach of Contract and Tortious Interference: deposition testimony and expert report regarding the lost profits damages resulting from the breach of an exclusive marketing agreement and customer supply agreement, and tortious interference with existing business relationships.
- **Federal Trade Commission v. I Works, Inc., et al.**
US District Court, District of Nevada (Case No. 2:10-CV-2203-MMD-GWF)
Violations of Federal Trade Commission Act, Electronic Fund Transfer Act, and Regulation E:

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deposition testimony and expert report regarding economic analysis of factors that may be relevant to liability and equitable relief.

- ***AbbVie Inc. and Wisconsin Alumni Research Foundation v. Hospira, Inc.***
US District Court, District of Delaware (Case No. 11-648-GMS)
Patent Infringement: deposition testimony and expert report regarding the commercial success of an invention that covers the use of paricalcitol to treat patients with renal osteodystrophy while avoiding hyperphosphatemia, and an invention directed to pharmaceutical formulations for vitamin D derivatives, such as paricalcitol, that are soluble and have self-preserved effectiveness against microorganisms.
- ***Rockwell Automation, Inc. and Rockwell Automation Technologies, Inc. v. WAGO Corporation and WAGO Kontakttechnik GmbH & Co. KG***
US District Court, Western District of Wisconsin (Case No. 10-CV-718)
Patent Infringement: trial and deposition testimony and expert report regarding the damages-related issues related to industrial controllers.
- ***Newire, Inc. v. Southwire Company***
Chancery Court for the State of Tennessee, 18th Judicial District (Case No. 2011C-21)
Breach of Contract: trial and deposition testimony and expert report regarding the lost royalties resulting from failure to use best efforts to commercialize and maximize revenues derived from the use of patented wiring technology.
- ***McLane Foodservice, Inc. v. Ready Pac Produce, Inc. and Tanimura & Antle, Inc.***
US District Court, District of New Jersey (Case No. 10-06076 (RMB) (JS))
Breach of Contract and Breach of Warranties: expert report regarding the lost profits damages resulting from the presence of produce contaminated with Escherichia coli 0157:H7 bacteria in the Taco Bell supply chain and in meals served at certain Taco Bell restaurants.
- ***Astellas US LLC and Astellas Pharma Inc. v. Nycomed U.S., Inc.***
US District Court, District of New Jersey (Case No. 10-5599 (WJM/MF))
Patent Infringement: deposition testimony and expert report regarding the commercial success of an invention that covers the use of a product for the treatment of atopic dermatitis.
- ***Model Model Hair Fashion Inc. v. Beauty Plus Trading Co., et al.***
US District Court, District of New Jersey (Case No. 09-4856 (ES))
Trademark Infringement: expert report regarding the market penetration of trademarks related to wigs, hair weaves, and pony tail products, and unjust enrichment and reasonable royalty damages resulting from the infringement of the MODEL MODEL trademark.
- ***Stryker Spine v. Surgical Orthomedics, Inc., et al.***
American Arbitration Association (Case No. 18-193-Y-01337-09 01)
Breach of Contract, Trade Secret Misappropriation, and Unfair Competition: arbitration and deposition testimony and expert report regarding the lost profits damages resulting from the breach of non-compete and confidentiality agreements related to sale of spinal implant products.
- ***Stryker Orthopaedics v. Scott Nizolek***
US District Court, District of New Jersey (Case No. 09-3469 (WJM)(MF))
Breach of Contract: deposition testimony and expert report regarding the lost profits damages

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resulting from breach of non-compete and confidentiality agreements related to the sale of hip and knee implants.

- ***In the Matter of Certain Ground Fault Circuit Interrupters and Products Containing Same***
US International Trade Commission (Investigation No. 337-TA-739)
Patent Infringement: trial and deposition testimony and expert report regarding the scope of an exclusion order and the appropriate amount of bond in section 337 case involving ground fault circuit interrupter technology.
- ***British Telecommunications plc, et al. v. Haier America Trading, L.L.C., et al.***
US District Court, Southern District of New York (Case No. 09-CV 7114 WGY)
Patent Infringement: deposition testimony and expert report regarding the reasonable royalty damages related to digital television sets, digital TV/DVD combination products, DVD players, and Blu-ray disc players using MPEG-2 and ATSC technology.
- ***Oberon Company v. Paulson Manufacturing Corp.***
US District Court, District of Massachusetts (Case No. 06-11210 WGY)
Patent Infringement, False Advertising, and Unfair Competition: expert report regarding the lost profits and reasonable royalty damages related to electric arc face shield products.
- ***BestSweet, Inc. v. NTI Holdings Corp.***
US District Court, Eastern District of Virginia, Alexandria Division (Case No. 1:09-CV-942 (LO/TCB)
Patent Infringement, Trade Secret Misappropriation, and Breach of Contract: expert report regarding the reasonable royalty damages, unjust enrichment, and lost royalties related to soft-chew nutraceuticals.
- ***Herman Minkin and H&M Aeronaut Tool Co., Inc. v. Gibbons P.C.***
US District Court, District of New Jersey (Case No. 2:08-CV-02451-WJM-CCC)
Legal Malpractice: expert report regarding the lost profits related to extended reach pliers.
- ***Pegasus Imaging Corporation v. Allscripts Healthcare Solutions, Inc. and Allscripts, LLC***
US District Court, Middle District of Florida (Case No. 8:08-CV-1770-T-30 EAJ)
Breach of Contract, Copyright Infringement, Trade Secret Misappropriation, Unfair Trade Practices, and Lanham Act Violation: arbitration and deposition testimony and expert report regarding the lost licensing fees and unjust enrichment related to barcoding software.
- ***Asymmetrx, Inc. and President and Fellows of Harvard College v. Dako Denmark A/S and Dako North America, Inc.***
US District Court, District of Massachusetts (Case No. 1:09-CV-10396)
Patent Infringement: expert report regarding the lost profits and reasonable royalty damages involving patents covering prostate cancer diagnostic test.
- ***Ultratech International, Inc. and Aqua-Leisure Industries, Inc. v. Swimways Corporation***
US District Court, Middle District of Florida, Jacksonville Division (Case No. 3:05-CV-00134-HLA-MCR)
Patent Infringement: expert report regarding the reasonable royalty damages involving patents covering pop-up pools.

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- **Taltwell, LLC v. Zonet USA Corp.**
US District Court, Eastern District of Virginia, Alexandria Division (Case No. 3:07-CV-00543-REP)
Patent Infringement: expert report regarding the reasonable royalty damages involving patents covering fax/modems and adapter cards.
- **Nissim Corp. v. Time Warner Inc. et al.**
US District Court, Southern District of Florida (Case No. 07-20624-CIV-Cooke/Brown)
Patent Infringement: expert report regarding the reasonable royalty damages involving patents covering seamless play and user operation control capabilities contained within DVDs.
- **Newspring Industrial Corporation v. Empire Industrial Corporation et al.**
US District Court, District of New Jersey (Case No. 04-3435 (FSH)(PS))
Patent Infringement: expert report regarding the reasonable royalty damages involving patents covering the design of plastic containers and the technology related to a sealing device embodied in plastic containers.
- **Astra Technologies Limited, et al. v. CD Connect, Inc., et al.**
US District Court, Eastern District of Texas (Case No. 4:03CV343)
Trade Secret Misappropriation: expert report regarding the lost profits and unjust enrichment damages resulting from the use of trade secrets related to customer contacts, contract expiration dates, and pricing information.
- **Cook Biotech Incorporated, et al. v. Acell, Incorporated, et al.**
US District Court, Northern District of Indiana (Case No. 4:03CV0046(AS))
Breach of Contract: expert report regarding the underpayment of royalties to inventors of extracellular matrix materials technology from Purdue Research Foundation.
- **Intelli-Check, Inc. v. Tricom Card Technologies, Inc., et al.**
US District Court, Eastern District of New York (Case No. 03-3706 LDW ETB)
Patent Infringement: expert report regarding the reasonable royalty damages involving patents covering age verification and document authentication device and software.
- **High Concrete Structures, Inc. v. New Enterprise Stone & Lime Co., Inc., et al.**
US District Court, Eastern District of Pennsylvania (Case No. 02-CV-86)
Patent Infringement: expert report regarding the reasonable royalty damages involving patent covering tilt frame device for transporting large precast concrete structures.
- **Medtronic Sofamor Danek, Inc., et al. v. Osteotech**
US District Court, Western Division of Tennessee (Case No. 99-2656-GV)
Patent Infringement: affidavit involving discovery-related issues in case involving patents covering the instruments and method of inserting a spinal inter-body fusion device.

SELECTED CONSULTING EXPERIENCE (LITIGATION)

- False Advertising: lost profits related to false advertising in the medical apparel industry.
- Patent Infringement: reasonable royalty damages in a case involving patents directed to light-emitting diodes.

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- Patent Infringement: analysis of patent pool compliance with fair, reasonable, and non-discriminatory (FRAND) commitments and determination of FRAND-compliant royalties involving patents directed to the transmission and storage of digital audio files.
- Patent Infringement: reasonable royalty damages in a case involving patents related to a process for producing semiconductor epitaxial films.
- Patent Infringement: reasonable royalty damages in a case involving patents related to components of hard disk drives.
- False Advertising: lost profits resulting from false advertising of products in the cosmetics industry.
- Patent Infringement: reasonable royalty damages in a case involving patents related to electrochemoluminescent detection technology used in immunoassay test equipment and assays.
- Patent Infringement: regression analysis related to the value of increased processor speed in smartphones and tablet devices.
- Patent Infringement: analysis of conjoint and usage surveys related to the market value of certain smartphone and tablet features contained in Google Play Books, Google Play Music, and Google Play Movies functionalities.
- Patent Infringement: reasonable royalty damages in a case involving patents related to perfluoropolymers used in semiconductor fabrication applications.
- Trademark Infringement/False Advertising: lost profits and disgorgement related to trademark infringement and false advertising involving products in the sports apparel industry.
- Patent Infringement: analysis of a conjoint survey related to the market value of certain smartphone and tablet features contained in Google’s cloud messaging service.
- Patent Infringement: analysis of a conjoint survey related to the market value of certain smartphone and tablet features.
- Patent Infringement: reasonable royalty damages in a case involving telecommunications network technology.
- False Advertising: lost profits related to false advertising in the food industry.
- Patent Infringement: commercial success involving patents directed to the treatment of menorrhagia.
- Patent Infringement: preliminary injunctive relief involving patents directed to dietary calcium supplements.
- Trademark Infringement/False Advertising: lost profits from trademark infringement and false advertising in the health supplement industry.
- Patent Infringement: reasonable royalty and prejudgment interest involving patents directed to automotive engines.
- Patent Infringement: reasonable royalty and prejudgment interest involving patents directed to automotive navigation systems.
- Patent Infringement: lost profits, reasonable royalty, and prejudgment interest involving

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patents directed to DNA amplification and sequencing technology.

- Patent Infringement: reasonable royalty and prejudgment interest involving patents directed to power management, bus configuration, and card slot technology in laptops and desktops.
- Patent Infringement and Breach of Contract: lost profits, lost royalties, reasonable royalty, and commercial success involving a patent and contract directed to software and hardware products, and technologies that provide connectivity and centralized management of IT infrastructure through KVM switches.
- Patent Infringement: commercial success involving a patent directed to the treatment of dermatological disorders.
- Trade Secret Misappropriation: unjust enrichment involving the misappropriation of trade secrets directed to aramid fiber production.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to rental matching systems over the internet.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to hard disk drive technology.
- Patent Infringement: commercial success covering a patent directed to the treatment of spasticity.
- Patent Infringement: commercial success covering patents directed to the treatment of HDL cholesterol and hypertriglyceridemia.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to hemophilia treatment.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to a type of debit card program.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to genetically modified corn.
- Patent Infringement: commercial success covering a patent directed to the treatment of depression, anxiety, and pain.
- Patent Infringement: reasonable royalty involving a patent directed to a method for a health care provider and a patient to communicate automatically and electronically with each other over the internet.
- Misappropriation of Trade Secrets: unjust enrichment involving the misappropriation of trade secrets directed to loss prevention systems.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to automotive entertainment systems.
- Patent Infringement: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to hip implant technology.
- Trade Secret Misappropriation: reasonable royalty involving misappropriation of trade secrets directed to fingerprint identification technology.

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- Patent Infringement: commercial success of valacyclovir hydrochloride.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to implantable tissue expanders.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to a process for aging aluminum lithium alloys used for space shuttle external tanks.
- Patent Infringement: reasonable royalty and prejudgment interest involving patents directed to cores, intermediate layers, and covers of golf balls.
- Patent Infringement: domestic industry, scope of exclusion order, and appropriate amount of bond to be set for products covered by an exclusion order during the Presidential review period in a Section 337 case involving NAND and NOR flash memory products.
- Patent Infringement: commercial success covering a patent directed to the active ingredient of an anti-infective drug.
- Patent Infringement: lost profits and prejudgment interest involving a patent directed to AC to DC power converter circuits used for backlights.
- Breach of Contract: analysis of damages arising from claims of fraud and breach of contract in a case involving a pharmaceutical product.
- Patent Infringement: reasonable royalty involving patents directed to genetically modified corn seed.
- Patent Infringement: lost profits, reasonable royalty, and prejudgment interest involving patents directed to a system and method for distributing lottery tickets.
- Patent Infringement: commercial success covering a patent directed to the active ingredient of an anti-infective drug (levofloxacin).
- Trade Secret Misappropriation: damages and profits associated with trade secrets directed to a luxury hotel and automotive partnership.
- Patent Infringement: commercial success involving a patent directed to the treatment of ulcerative colitis.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to audio playback for portable electronic devices.
- Patent Infringement: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to snap-fit external fixation systems.
- Breach of Contract: damages and profits associated with alleged contractual breaches, tortious interference, and intentional negligent representations involving spinal implants.
- Breach of Contract: lost profits associated with alleged contractual breach and tortious interference, as well as irreparable harm inquiry, involving a strategic alliance to provide electronic chemicals, gases, and services to the semiconductor industry.
- Patent Infringement: lost profits, price erosion, reasonable royalty, and prejudgment interest involving a patent directed to mass spectrometer ionization sources.

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- Patent Infringement: lost profits, reasonable royalty, price erosion, and prejudgment interest involving a patent directed to porcine vaccine (PRRS) products.
- Patent Infringement: reasonable royalty involving patents covering computer video and audio software.
- Breach of Contract: damages and profits associated with alleged breach of contract and various tort claims involving electrochemoluminescent detection technology used in immunoassay and DNA probe assay kits.
- Patent Infringement: lost profits, reasonable royalty, and prejudgment interest involving patents covering the instruments and method of inserting a spinal inter-body fusion device.
- Patent Infringement: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to a device and method for optically detecting particles in fluid.
- Patent Infringement: measure and amount of prejudgment interest in a patent infringement, fraud, and unjust enrichment case covering prenatal vitamin formulations.
- Patent Infringement: reasonable royalty and prejudgment interest covering patents directed to telecommunications technology (ATM over SONET networks).
- Patent Infringement: lost profits, reasonable royalty, and prejudgment interest involving a patent directed to zipper closure mechanisms for home storage bags.
- Patent Infringement: lost profits, reasonable royalty, and prejudgment interest covering a patent directed to digital time stamping.
- Patent Infringement: reasonable royalty covering a patent directed to semi-synthetic processes for manufacturing an anti-cancer drug.
- Patent Infringement: lost profits and prejudgment interest involving patents directed to spinal implant devices.
- Patent Infringement: reasonable royalty and prejudgment interest involving a patent directed to data sorting software.

SELECTED CONSULTING EXPERIENCE (NON-LITIGATION)

- Valuation of a patent related to semiconductor technology.
- Valuation of a patent related to telecommunications technology.
- Valuation of a patent related to smartphone and tablet feature.
- Valuation of patent related to a pharmaceutical drug to treat cardiac disease.
- Valuation of patent related to a pharmaceutical drug to treat mental illness.
- Valuation of patent related to ophthalmic digital surfacing machines.
- Valuation of a patent related to a drug delivery system used in topical non-steroidal anti-inflammatory drugs (NSAIDs).
- Valuation of clinical trial data and patent applications related to pain management pharmaceutical

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therapy.

- Valuation and licensing patents of high-index optical lens technology.
- Valuation and licensing of remote patient-monitoring technology.
- Valuation and licensing of consumer product technology (portable heat-generating device).
- Valuation and licensing of entertainment services technology (internet gaming).
- Valuation and licensing of consumer electronics technology (home networking device).
- Econometric demand analysis and demand and cost forecasts of ADA and SRP paratransit services in a five-county region in Pennsylvania.
- Economic impact study to evaluate direct, indirect, and induced effects of aviation activity.
- Economic model and simulation software used to forecast trip demand and cost conditions for demand response service in New York under a variety of policy scenarios.
- Economic impact study to evaluate direct, indirect, and induced effects of transit operations on the regional economy.

ARTICLES AND PUBLICATIONS

“Preliminary Injunctive Relief in Patent Cases: Repairing Irreparable Harm,” (with John Jarosz and Jorge Contreras), in *Texas Intellectual Property Law Journal* (Vol. 31 No. 1, Fall 2022).

“Prejudgment Interest: W.D. Texas Got It Right In the VSLI v. Intel Patent Suit,” with John Jarosz and Joseph Maloney, *les Nouvelles*, Vol. LVII No. 3 (September 2022)

“Academia in Court: How Marketing Scholarship Informs the Law,” with David Reibstein, Christopher Borek, and Suneal Bedi (2021), Impact at JMR, *Journal of Marketing Research* (July 2022)

“Determining the Price for One When All You Have is the Price for Many,” with Xiao Zhang, QuickRead, National Association of Certified Valuators and Analysts (June 2022)

“Apportioning Value In Patent Portfolio License and Sale Agreements,” with Xiao Zhang, *les Nouvelles*, Vol. LV No. 4 (December 2020)

“Patent Damages in US Courts: Overview of Current State of Play,” with John Jarosz, Justin McLean, and Carla Mulhern, *IAM Yearbook 2019: Building IP Value in the 21st Century* (2018)

“Introduction to Lost Profits,” with John Jarosz and Michael Chapman, chapter in *Lost Profits Damages: Principles, Methods, and Applications* (2017)

“Assessing Commercial Success at the U.S. Patent Trial and Appeal Board,” with John Jarosz, *International In-house Counsel Journal*, Vol. 8, No. 32 (2015)

“Intellectual Property/Software,” chapter in *Litigation Support Report Writing* (2003)

“Demographic Trends in US Cities,” with Harry Kelejian and Dennis Robinson, chapter in *Contemporary Issues in Urban and Regional Economics* (2005)

“Patent Damages,” *IP Litigator*, Vol. 7, No. 1 (January 2001)

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PRESENTATIONS AND SPEAKING ENGAGEMENTS

“Calculating Intellectual Property Damages: Guidelines, Trends and Analysis,” The Knowledge Group webinar (July 2018)

“Intellectual Property Valuation: What’s In and Out in 2018,” The Knowledge Group webinar (February 2018)

“Advanced Topics and Current Issues in Patent Damages,” 2017 Patent Damages Symposium, Licensing Executives Society (February 2017)

“Licensing IP and Technology: Advancing the Concepts in 2016,” The Knowledge Group webinar (March 2016)

“Changes in the Patent Landscape,” International Intellectual Property Law Association Annual Congress, Dubai, UAE (January 2015)

“Patent Damages, the New ‘Economic Realism’ and Early Case Assessments,” Hamilton, Brook, Smith & Reynolds seminar (January 2014) “Recent Federal Circuit Decisions and their Impact on IP Damages,” Government Intellectual Property Law Association (April 2011)

“Overview of IP Damages in Cases Involving the U.S. Government,” Government Intellectual Property Law Association (February 2011)

“False Patent Marking in the Wake of the *Forrest Group* Decision,” Law Seminars International (May 2010)

“IP Damages & Injunctions,” Houston Intellectual Property Law Association (August 2009)

“An Overview of IP Damages & Injunctions,” San Diego Intellectual Property Law Association (April 2008)

“IP Damages, Injunctions & Recent Damages Decisions,” Wisconsin Intellectual Property Law Association (February 2008)

“An Overview of IP Damages & Injunctions,” Silicon Valley Intellectual Property Law Association (January 2008)

“An Overview of IP Damages & Injunctions,” Rochester Intellectual Property Law Association (January 2008)

“An Overview of IP Damages & Injunctions,” Pittsburgh Intellectual Property Law Association (January 2008)

“An Overview of IP Damages & Injunctions,” New Jersey Intellectual Property Law Association (November 2007)

“Advanced Intellectual Property Valuation,” Professional Development Series, Licensing Executives Society (June 2007)

“Risks, Rewards & Resources: Evaluating the Forces of Change in Licensing Transactions,” Licensing Executives Society Winter Meeting (February 2007)

“Advanced Valuation Skills,” Professional Development Series, Licensing Executives Society (November 2006)

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“Implementing Valuation Methods: Discounted Cash Flow, Monte Carlo Simulation and Real Options,” Licensing Executives Society Annual Meeting (September 2006)

“Intellectual Property Valuation,” Intermediate Intellectual Asset Management, Professional Development Series, Licensing Executives Society (July 2006)

“Implementing Valuation Methods: Discounted Cash Flow, Monte Carlo Simulation and Real Options,” Licensing Executives Society Annual Meeting (October 2005)

“Factors Affecting Royalties,” with Carla Mulhern, Licensing Executives Society Annual Meeting (October 2005)

“Implementing Valuation Methods: Discounted Cash Flow, Monte Carlo Simulation and Real Options,” Licensing Executives Society Annual Meeting (October 2004)

“Valuing Intellectual Property: Determining the Appropriate Royalty Rate,” American Intellectual Property Law Association Spring Meeting (April 2002)

“Monte Carlo Simulation: Advantages over Traditional DCF,” Licensing Executives Society Winter Meeting (February 2002)

“Industry Royalty Rates and Profitability: An Empirical Test of the 25% Rule,” with Carla Mulhern and John Jarosz, Licensing Executives Society Annual Meeting (October 2001)

“Spatial Econometric Analysis of Budget Spillovers and Fiscal Policy Interdependence,” University of Maryland Public Finance Seminar (1998)

PROFESSIONAL AFFILIATIONS

American Economic Association (AEA)

American Marketing Association (AMA)

Licensing Executives Society (LES)

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Bates Ranges		
NIKE0000253	–	NIKE0000275
NIKE0029089		
NIKE0030428	–	NIKE0030429
NIKE0039100		
NIKE0039821	–	NIKE0039826
NIKE0039827	–	NIKE0039832
NIKE0039833	–	NIKE0039840
NIKE0039841	–	NIKE0039846
NIKE0039847	–	NIKE0039853
NIKE0041004		
NIKE0041006	–	NIKE0041018
NIKE0041169		
NIKE0041171		
STX0021868	–	STX0021951
STX0774285		
STX0774286	–	STX0774308
STX0774309	–	STX0774336
STX0774394		
STX0774395		
STX0805883		
STX0092496	–	STX0092544
STX0805882		
STX0805884		
STX0805887		
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STX0805896		
STX0805898		
STX0805899		

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DOCUMENTS RELIED UPON

Case Materials and Legal Documents:

Answer to First Amended Complaint, *Nike, Inc. v. StockX LLC*, United States District Court for the Southern District of New York, June 6, 2022.
First Amended Complaint, *Nike, Inc. v. StockX LLC*, United States District Court for the Southern District of New York, Case 1:22-cv-00983-VEC, May 25, 2022.
Nike’s Letter Re: *Nike, Inc. v. StockX LLC*, Case No. 1:22-cv-00983-VEC (S.D.N.Y.), ECF 080, December 12, 2022.
Nike’s Letter Re: *Nike, Inc. v. StockX LLC*, Case No. 1:22-cv-00983-VEC (S.D.N.Y.), ECF 089, December 19, 2022.

Depositions:

Deposition of Barbara Delli Carpin, January 10, 2023.
Deposition of Brock Huber, February 22, 2023.
Deposition of Melanie Harris, January 19, 2023.
Deposition of Ron Faris, December 7, 2022.
Deposition of Roy Kim, February 8, 2023.

Financial Statements and Annual Reports:

Amazon.com, Inc. Form 10-K for the Fiscal Year Ended December 31, 2022.
eBay, Inc. Form 10-K for the Fiscal Year Ended December 31, 2022.
Etsy Inc., Form 10-K for the Fiscal Year Ended December 31, 2021.
Nike, Inc., Form 10-K for the Fiscal Year Ended May 31, 2021.
Nike, Inc., Form 10-K for the Fiscal Year Ended May 31, 2022.
The RealReal, Inc., Form 10-K for the Fiscal Year Ended December 31, 2022.

Articles, Books, and Publications:

Abtan, O., et al., “Why Luxury Brands Should Celebrate the Pre-Owned Boom,” Boston Consulting Group X Vestiaire Collective, October 16, 2019, available at https://web-assets.bcg.com/img-src/BCG-Why-Luxury-Brands-Should-Celebrate-the-Preowned-Boom-Oct-2019_tcm9-232622.pdf.
Elfenbein, D.W., R. Fisman, R., and B. McManus, “Does Cheap Talk Affect Market Outcomes? Evidence from eBay,” *American Economic Journal: Applied Economics*, Vol. 11, No. 4, 2019, pp. 305-326.
Evans, D.S., “Governing Bad Behavior by Users of Multi-Sided Platforms,” *Berkeley Technology Law Journal*, Vol. 27, 2012, pp. 1201-1250.
Frankel, R., M. Johnson, and D. Skinner, “An Empirical Examination of Conference Calls as a Voluntary Disclosure Medium,” *Journal of Accounting Research*, Vol. 37, No. 1, 1999, pp. 133-150.
Luca, M., “Designing Online Marketplaces: Trust and Reputation Mechanisms,” *Innovation Policy and the Economy*, Vol. 17, No. 1, 2017, pp. 77-93.
Nosko, C., and S. Tadelis, “The Limits of Reputation in Platform Markets: An Empirical Analysis and Field Experiment,” *National Bureau of Economic Research Working Paper Series*, 2015.
Puthiyamadam, T., and J. Reyes, “Experience Is Everything: Here’s How to Get It Right,” PwC, 2018, available at <https://www.pwc.com/us/en/advisory-services/publications/consumer-intelligence-series/pwc-consumer-intelligence-series-customer-experience.pdf>.
Rochet, J.C., and J. Tirole, “Two-Sided Markets: An Overview,” Working Paper, 2004.
Tadelis, S., “Reputation and Feedback Systems in Online Platform Markets,” *Annual Review of Economics*, Vol. 8, 2016, pp. 321-340.
UNCTAD Secretariat, “The Role of Disclosure in Risk Assessment and Enhancing the Usefulness of Corporate Reporting in Decision-making,” 2017.

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EXHIBIT 2

DOCUMENTS RELIED UPON

Earnings Call Transcripts:

Nike, Inc., FY 2020 Q3 Earnings Release Conference Call Transcript, March 24, 2020.
Nike, Inc., FY 2020 Q4 Earnings Release Conference Call Transcript, June 25, 2020.
Nike, Inc., FY 2021 Q1 Earnings Release Conference Call Transcript, September 22, 2020.
Nike, Inc., FY 2021 Q2 Earnings Release Conference Call Transcript, December 18, 2020.
Nike, Inc., FY 2021 Q3 Earnings Release Conference Call Transcript, March 18, 2021.
Nike, Inc., FY 2021 Q4 Earnings Release Conference Call Transcript, June 24, 2021.
Nike, Inc., FY 2022 Q1 Earnings Release Conference Call Transcript, September 23, 2021.
Nike, Inc., FY 2022 Q2 Earnings Release Conference Call Transcript, December 21, 2021.
Nike, Inc., FY 2022 Q3 Earnings Release Conference Call Transcript, March 21, 2022.
Nike, Inc., FY 2022 Q4 Earnings Release Conference Call Transcript, June 27, 2022.
Nike, Inc., FY 2023 Q1 Earnings Release Conference Call Transcript, September 29, 2022.
Nike, Inc., FY 2023 Q2 Earnings Release Conference Call Transcript, December 21, 2022.
Nike, Inc., FY 2023 Q3 Earnings Release Conference Call Transcript, March 21, 2023.

Analyst Reports:

BTIG Cryptoasset Currents, BITG, January 31, 2022.
BTIG Web3 Watch, BTIG, June 22, 2022.
Comprehensive Technical and Fundamental Analysis for NKE, Stock Traders Daily, June 15, 2020.
Comprehensive Technical and Fundamental Analysis for NKE, Stock Traders Daily, July 1, 2020.
Everything’s Gonna Be Alright; Initiate at Outperform, PT \$170, Wedbush, October 4, 2021.
Expecting Strong Beat to Q3; Raising Estimates & Price Target to \$170, Piper Sandler, March 14, 2021.
Glimpse into Digital Advantage - Jordan 11 Adapt Livestream Launch Yesterday, Evercore ISI, December 23, 2020.
Just Kickin’ It: Sneaker Tracker, Sep22; Lower NKE Ests on FX & Jordan Slowdown, Wedbush, September 9, 2022.
Metaverse Products Taking Shape, Literally?, Evercore ISI, July 26, 2022.
Port Congestion Shifts Revenue into F4Q; Reiterate Buy, BofA Global Research, March 18, 2021.
Retail Details Vol. 27: NKE’s Recycling Program, Inv./Sales, New VS Ad Campaign, Jefferies, April 18, 2021.
Room to Run in Our NKEs; Initiating at Outperform with a \$145 Price Target, RBC Capital Markets, November 11, 2020.
SNEAKER WARS/F’10 Preview: NKE on Top, but Lowering Est. on Weaker Macro, Jefferies, September 23, 2022.
SNEAKER WARS: June Web Data Remained Strong for NKE Despite Macro Headwinds, Jefferies, July 22, 2022.
SNEAKER WARS: NKE Continues to Lead the Way; UAA’s Curry Flow Still Popular, Jefferies, June 27, 2022.
SNEAKER WARS: NKE Dominating Web Data, Lowering Ests. Due to Macro Uncertainty, Jefferies, March 16, 2022.
UBS Evidence Lab Inside: 2Q22 Preview: Don’t Expect a Big Stock Price Move, UBS Equities, December 9, 2021.
UBS Evidence Lab Inside: 3Q22 Preview: Expect a Negative Catalyst, UBS Equities, March 13, 2022.
UBS Evidence Lab Inside: 4Q22 Preview: We Think the Stock Will Rise over Earnings; Buy, UBS Equities, June 15, 2022.
Winning Mindset - Initiate at Outperform, RBC Capital Markets, September 22, 2022.

Websites:

“About Us,” BMO Capital Markets, available at <https://capitalmarkets.bmo.com/en/about-us/>, accessed April 30, 2023.
“About Us,” SIG, available at <https://sig.com/about/>, accessed April 30, 2023.
“Air Jordan 1 High OG Lost & Found to Release in China First,” Kicks on Fire, November 2, 2022, available at <https://www.kicksongfire.com/air-jordan-1-high-og-lost-and-found/>, accessed April 28, 2023.
“Amazon Custom,” Amazon, available at <https://sell.amazon.com/programs/custom>, accessed May 2, 2023.

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DOCUMENTS RELIED UPON

Websites (continued):

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“Barron’s,” Dow Jones, available at <https://www.dowjones.com/products/barrons/>, May 2, 2023.

“Big Facts: Current Culture Index 2023,” StockX, available at <https://stockx.com/about/sx-market-insights/big-facts-current-culture-index-2023/>, accessed April 27, 2023.

“Buyer Protection Policy,” GOAT, <https://www.goat.com/buyer-protection-guarantee>, accessed May 5, 2023.

“Consignment/Sales Agreement,” The RealReal, available at https://www.therealreal.com/consignor_terms, accessed May 3, 2023.

“Creating a Listing,” eBay Customer Service, available at <https://www.ebay.com/help/selling/listings/creating-listing?id=4105>, accessed May 2, 2023.

“Day 1,” dotSWOOSH Blog, November 14, 2022, available at <https://blog.swoosh.nike/day-1-dcdcb1be48b7>, accessed May 3, 2023.

“eBay Acquires Sneaker Con Authentication Business,” PR Newswire, November 29, 2021, available at <https://www.prnewswire.com/news-releases/ebay-acquires-sneaker-con-authentication-business-301432741.html>, accessed March 24, 2023.

“eBay Authenticity Guarantee,” eBay Customer Service, available at <https://www.ebay.com/help/selling/selling-tools/ebay-authenticity-guarantee?id=4644>, accessed May 2, 2023.

“eBay Launches Authentication on All Watches Sold for \$2,000 or More in the US with New Service, ‘Authenticity Guarantee’,” PR Newswire, September 8, 2020, available at <https://www.prnewswire.com/news-releases/ebay-launches-authentication-on-all-watches-sold-for-2-000-or-more-in-the-us-with-new-service-authenticity-guarantee-301125281.html>, accessed May 3, 2023.

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“GOAT Group to Acquire Grailed,” PR Newswire, October 17, 2022, available at <https://www.prnewswire.com/news-releases/goat-group-to-acquire-grailed-301650425.html>, accessed May 3, 2023.

“How Buying Works on eBay,” eBay Customer Service, available at <https://www.ebay.com/help/buying/buy-now/buying-works?id=4002>, accessed April 28, 2023.

“How Do I Place an Order?” GOAT Support, available at <https://support.goat.com/hc/en-us/articles/360023485932-How-do-I-place-an-order->, accessed May 3, 2023.

“How Do I Sell an Item?” Grailed, available at <https://help.grailed.com/hc/en-us/articles/115003612454-How-do-I-sell-an-item-60046707673>, accessed May 3, 2023.

“How Do Offers Work?” Grailed, available at <https://help.grailed.com/hc/en-us/articles/360046707673>, accessed May 3, 2023.

“How to Sell Clothes on Depop: Everything You Need to Know to Start Selling,” Depop, available at <https://blog.depop.com/articles/how-to-sell-clothes-on-depop-everything-you-need-t>, accessed May 3, 2023.

“Inside the ‘Hype’ Business Model,” Courier, October 7, 2021, available at <https://mailchimp.com/courier/article/hype-economics/>, accessed April 14, 2023.

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“Nike Air Force 1 Low Tiffany & Co. 1837,” StockX, available at <https://stockx.com/nike-air-force-1-low-sp-tiffany-and-co>, accessed April 7, 2023.

“Nike Dunk Shoes,” Nike, available at <https://www.nike.com/w/dunk-shoes-90aohz7ok?sort=priceDesc>, accessed May 3, 2023.

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EXHIBIT 2

DOCUMENTS RELIED UPON

Websites (continued):

“Nike Launches .SWOOSH, a New Digital Community and Experience,” Nike Newsroom, November 14, 2022, available at <https://about.nike.com/en/newsroom/releases/nike-launches-swoosh-a-new-digital-community-and-experience>, accessed May 3, 2023.

“Nike Refurbished,” Nike, available at <https://www.nike.com/sustainability/nike-refurbished>, accessed May 3, 2023.

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“Nike SB Dunk Low Grateful Dead Bears Opti Yellow,” StockX, available at <https://stockx.com/nike-sb-dunk-low-grateful-dead-bears-yellow>, accessed May 3, 2023.

“Nike,” HighSnobiety, available at <https://www.hightsnobiety.com/tag/nike/>, accessed April 13, 2023.

“Nike’s Executive Saga Exposes Uneasy Relationship with Resellers,” Digital Commerce 360, March 3, 2021, available at <https://www.digitalcommerce360.com/2021/03/03/nikes-executive-saga-exposes-uneasy-relationship-with-resellers/>, accessed May 1, 2023.

“Nurturing Customer Trust in Luxury Resale,” Martechvibe, November 2, 2021, available at <https://martechvibe.com/martech/nurturing-customer-trust-in-luxury-resale/>, accessed May 1, 2023.

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EXHIBIT 3A
NIKE COMMENTARY ON SALES PERFORMANCE BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
Q3 FY 2020 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (3/24/2020)	
[1] NIKE, Inc. Q3 revenue grew 5%, up 7% on a currency-neutral basis, reflecting strong balanced growth across EMEA, APLA, North America and Greater China, prior to the impact of COVID-19, all fueled by NIKE Digital growing 36% versus prior year.	
[2]	For a little bit of context on the strength we had entering this fourth quarter, NIKE Digital continues to fuel strong growth in North America, up a relatively extraordinary 33% in the quarter. We've talked to you about this significant opportunity that we think in terms of the women's business. Our women's business grew at a rate that was nearly double that of men's, both in footwear and apparel. So, we're seeing strong growth there.
Q4 FY 2020 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (6/25/2020)	
[3]	NIKE, Inc. Q4 revenue declined 38%, down 36% on a currency-neutral basis, reflecting the impact of NIKE-owned store closures and lower wholesale shipments partially offset by growth in NIKE Digital.
[4]	As retail began to reopen in mid-May, we saw strong double-digit growth in retail sales for our brand across the total North America marketplace. These trends have continued into early June, including NIKE Digital growing triple digits.
Q1 FY 2021 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (9/22/2020)	
[5]	NIKE, Inc. Q1 Revenue declined 1% and was flat on a currency-neutral basis, as NIKE Direct grew 13% led by strong digital growth offset by declines in our wholesale business. ... Finally, as we cut purchase orders to recalibrate supply and demand in North America during the first half of fiscal 2021, we shifted product allocations to fuel higher demand at NIKE Digital and our smaller group of strategic wholesale partners. The result was high-single-digit growth in differentiated wholesale offset by a decline of over 20% in undifferentiated wholesale, all with a higher full-price realization versus the prior year.
Q2 FY 2021 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (12/18/2020)	
[6]	We said inventory would return to a healthy and normalized level by the end of Q2, and now, through intentional supply and demand management actions, marketplace health has been restored across all geographies without compromising the value of our brands and product franchises. And NIKE-owned inventory is clean, ending Q2 down 2% versus prior-year while delivering 9% revenue growth on a reported basis.
[7]	NIKE, Inc. Revenue grew 9% in Q2, up 7% on a currency-neutral basis. As NIKE Direct grew 30% led by strong NIKE Digital growth of 80% and partially offset by declines in our wholesale business.

EXHIBIT 3A
NIKE COMMENTARY ON SALES PERFORMANCE BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
Q3 FY 2021 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (3/18/2021)	
[8] NIKE, Inc. revenue grew 3% in Q3, declining 1% on a currency-neutral basis as NIKE Direct grew 16% led by strong NIKE Digital growth offset by declines in our wholesale business due to the timing of wholesale shipments caused by global supply chain challenges in North America and mandatory store closures in EMEA.	
Q4 FY 2021 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (6/24/2021)	
[9]	In Q4, we saw growth of over 95%, which translates to 19% growth for the fiscal year. This full-year growth was led by our owned digital business, which has now more than doubled versus FY19, prior to the pandemic.
	In EMEA, Q4 revenue grew 107 percent on a currency-neutral basis, with strong growth across the region, including the UK and Ireland, France, Germany and Italy. Nike Direct grew 57 percent, despite government restrictions requiring nearly half of our Nike-owned stores to remain closed for the first two months of the quarter. ... Nike Digital grew nearly 30 percent versus the prior year.
	[11] [Deeper connections with consumers] translated into very strong retail sales growth throughout the year, and in many circumstances, we've seen demand outstripping supply. As we think about the future, especially as we exit 2021 and we move forward to 2022, there are definitely specific things that give us optimism and confidence.
Q1 FY 2022 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (9/23/2021)	
[12]	Even as physical retail revenue approached pre-pandemic levels, our digital business this quarter grew double digits. This is the result of an unwavering focus on our strategy and the investments we've made against our end-to-end digital transformation.
	[13] Our digital growth is led by outsized member buying, which has seen a penetration increase of 14 points since last year. Our membership strategy is working, as we increasingly use data and analytics to personalize member product offering and experiences. And we're seeing this come to life, as repeat buying members grew more than 70% in the quarter.
	[14] Consumer demand for NIKE, Jordan and Converse remains incredibly high, and our first quarter financial results would have been even stronger if not for supply chain congestion resulting in lack of available supply. Despite these headwinds, retail sales still grew double-digits versus the prior year, including a record-setting back-to-school season in North America.
[15]	Wholesale grew 5% in the quarter, negatively impacted by lower available inventory supply due to worsening transit times. Gross margin increased 170 basis points versus the prior year driven primarily by higher NIKE Direct margins and partially offset by increased ocean freight surcharges.

EXHIBIT 3A
NIKE COMMENTARY ON SALES PERFORMANCE BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
[16]	[In EMEA, retail sales] were impacted in late July and August due to regional closures and lower levels of foot traffic due to COVID containment.

Q2 FY 2022 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (12/20/2021)

- [17] Nike's second quarter financial results were in line with the expectations we established 90 days ago, fueled by continued brand momentum, the strength of our product franchises with extraordinary levels of full price realization, and strong season-to-date Holiday sales, offset by lower levels of available inventory supply relative to marketplace demand.
- [18] Enhanced onboarding experiences are attracting millions of new members into the top of the funnel, and we are focused heavily on member engagement and buying. Member engagement grew 27 percent, and repeat buyers grew 50 percent versus last year, driving overall higher AUR, AOV and member buying frequency.
- [19] [In North America, despite] strong retail sales momentum in the wholesale channel, revenue declined 1 percent as marketplace inventory levels remain lean, and Vietnam factory closures and longer transit times disrupt the flow of inventory supply to meet marketplace demand.

Q3 FY 2022 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (3/21/2022)

- [20] In Q3, Digital revenue was up 22% on a currency-neutral basis, as we continue to drive greater competitive separation, particularly through our app ecosystem. The Nike App was up more than 50% in the quarter and overtook Nike.com on mobile for our highest share of Digital demand. And SNKRS continues to gain momentum, particularly as its strong consumer engagement leads to improved conversion.
- [21] Gross Margin increased 100 basis points versus the prior year, driven primarily by higher Nike Direct margins due to lower markdowns, favorable foreign currency exchange rates, and a higher full price mix, partially offset by increased freight and logistics costs.
- [22] [In Greater China,] Nike-owned stores were down 5 percent, and Digital declined 19 percent, due to ongoing supply delays that negatively impacted timing of product launches.

Q4 FY 2022 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (6/27/2022)

- [23] Fourth quarter reported gross margins declined 80 basis points versus the prior year. This was primarily due to specific actions taken to manage supply and demand in Greater China following COVID-related disruption, as well as elevated freight and logistics costs.

EXHIBIT 3A
NIKE COMMENTARY ON SALES PERFORMANCE BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
[24]	In North America, Q4 revenue declined 5% and EBIT declined 18%, in line with our expectations, as we lapsed supply shifts in the previous year. Elevated ocean freight and logistics costs continue to dampen near-term profitability in this geography.
[25]	[O]ur wholesale revenue this year was depressed because we had to cut 130 million units of supply because our factories in Vietnam were closed for 12 weeks.

Q1 FY 2023 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (9/29/2022)

- [26] This quarter, repeat buying members grew by over 30%, with increased buying frequency and demand across total NIKE members. In fact, many of our most important membership benchmarks, reflecting how well we convert, engage, and retain buying members, are at near all-time highs.
- [27] First quarter reported gross margin declined 220 basis points to 44.3%. This was primarily due to elevated freight and logistics costs, plus higher markdowns across the marketplace in North America and unfavorable changes in net foreign currency exchange rates.
- [28] [W]hen we look at our performance in Q1 and then to date in September, we're seeing double-digit growth in retail sales. We're bringing what we call fresh assortments, so new product into market. We are seeing strong consumer demand, strong average weekly sell-through, and high full-price realization.

Q2 FY 2023 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (12/20/2022)

- [29] And more importantly, our repeat buying members who are more engaged spend more and spend more frequently are growing at an even faster pace of high double digits as they continue to be an important growth engine for our business.
- [30] Consumer demand for our brands drove double-digit currency-neutral revenue growth across NIKE, Jordan and Converse. Within NIKE Direct, retail traffic was up, conversion rates expanded and member buying fueled record digital results. Within wholesale, we saw strong retail sales and market share gains across our top strategic partners.

Q3 FY 2023 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (3/21/2023)

- [31] Even in a promotional environment, full-price sales remain strong. And for the seventh consecutive quarter, ASP growth was positive for NIKE, Inc., with benefits from strategic pricing, product mix, and our shift to Direct more than offsetting the short-term cost of promotions to liquidate excess inventory.

EXHIBIT 3A
NIKE COMMENTARY ON SALES PERFORMANCE BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
[32]	NIKE Direct outperformed, with member buying frequency increasing and store sales growing across all geographies.
[33]	Third quarter reported gross margins declined 330 basis points to 43.3%, due to higher markdowns increased product input costs, elevated freight and logistics expenses, including higher supply chain network costs in North America partially offset by strategic pricing actions.
[34]	Member moments throughout the quarter drove double-digit growth in repeat member buying.

Notes & Sources:

Nike's fiscal year ends in May of each calendar year. This exhibit covers quarterly earnings call from FY 2020 Q3 to FY 2023 Q3, which correspond to the calendar months of December 2019 to February 2023.

- [1]-[2] Nike, Inc., FY 2020 Q3 Earnings Release Conference Call Transcript, March 24, 2020, at pp. 6, 13. Nike Digital refers to sales through Nike's digital platforms, which include Nike's website and apps. Nike, Inc., Form 10-K for the fiscal year ended May 31, 2021, at p. 1.
- [3]-[4] Nike, Inc., FY 2020 Q4 Earnings Release Conference Call Transcript, June 25, 2020, at pp. 6-7.
- [5] Nike, Inc., FY 2021 Q1 Earnings Release Conference Call Transcript, September 22, 2020, at pp. 6-7. Nike Direct refers to Nike's direct-to-consumer sales through NIKE-owned retail stores and digital platforms. Nike, Inc., Form 10-K for the fiscal year ended May 31, 2021, at p. 1.
- [6]-[7] Nike, Inc., FY 2021 Q2 Earnings Release Conference Call Transcript, December 18, 2020, at pp. 4-5.
- [8] Nike, Inc., FY 2021 Q3 Earnings Release Conference Call Transcript, March 18, 2021, at pp. 6-7.
- [9]-[11] Nike, Inc., FY 2021 Q4 Earnings Release Conference Call Transcript, June 24, 2021, at pp. 2, 10, 15.
- [12]-[16] Nike, Inc., FY 2022 Q1 Earnings Release Conference Call Transcript, September 23, 2021, at pp. 4, 6-8.
- [17]-[19] Nike, Inc., FY 2022 Q2 Earnings Release Conference Call Transcript, December 20, 2021, at pp. 9-10, 13.
- [20]-[22] Nike, Inc., FY 2022 Q3 Earnings Release Conference Call Transcript, March 21, 2022, at pp. 9, 16, 19. SNKRS event is a special release event organized by Nike through its SNKRS app and website. These events are often used to release highly coveted limited edition sneakers. Furness, J., "SNKRS Day 2022: What to Know About Nike's In-App Event," Esquire, August 8, 2022, available at <https://www.esquire.com/uk/style/fashion/g40817209/snkers-day-2022/>, accessed May 1, 2023.
- [23]-[25] Nike, Inc., FY 2022 Q4 Earnings Release Conference Call Transcript, June 27, 2022, at pp. 13-14, 28.
- [26]-[28] Nike, Inc., FY 2023 Q1 Earnings Release Conference Call Transcript, September 29, 2022, at pp. 11-12, 20.
- [29]-[30] Nike, Inc., FY 2023 Q2 Earnings Release Conference Call Transcript, December 20, 2022, at pp. 5, 7.
- [31]-[34] Nike, Inc., FY 2023 Q3 Earnings Release Conference Call Transcript, March 21, 2023, at pp. 9, 11-12.

EXHIBIT 3B
NIKE COMMENTARY ON BRAND EQUITY BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
FY 2020 Q3 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (3/24/2020)	
[1] Thanks to our competitive advantages, the power of our brand in connection with consumers, our digital capabilities, our compelling product innovation, and most importantly, our extraordinary team, we will manage our business back to full recovery. We know, in times like these, that strong brands get even stronger, and I truly believe that no one is better equipped than NIKE to navigate the current climate.	
[2] While the setbacks from a business perspective will be significant for all, NIKE will come back even stronger as a brand and as a company. Consumer behavior is changing real-time. We're all witnessing new normals emerge in terms of both how consumers shop and stay active. Sport is being redefined as much broader than competition as the world finds new and creative ways to stay healthy and fit. And NIKE's digital ecosystem is keeping us connected real-time.	
FY 2020 Q4 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (6/25/2020)	
[3] As we look back in this quarter, it demonstrated once again that NIKE's competitive advantage is driven by our team and by our brand's ability to connect with consumers, and this is fueled by our strategy, the Consumer Direct Offense, and it's why I continue to believe no one is better positioned than NIKE to navigate the current environment.	
[4] First, the power of NIKE's brand continues. Leading with ... our values is drawing us closer to consumers. We used our ecosystem of NIKE Activity and Commerce Apps to directly engage with consumers in their homes as they focus on health and wellness. During this difficult time, NIKE has inspired and offered hope and as a result, worldwide affinity for our brand deepened during COVID-19 with our You Can't Stop Us campaign receiving more than 2 billion impressions to-date. Across all 12 of our key cities, NIKE remains consumers' number one favorite brand.	
[5] The strength of our brand, our deep connections to consumers and our unmatched product innovation give us an advantage to create and define our future. Fueled by the Consumer Direct Acceleration, NIKE will shape the marketplace and extend our brand leadership for years to come.	
FY 2021 Q1 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (9/22/2020)	
[6] Second, our brand continues to deeply connect. Through the power of sport, we are creating hope and inspiration at a time when the world needs it.	
[7] Second, the power of the NIKE brand continues to be felt all over the world. In all 12 of our key cities, NIKE remains consumer's number one favored brand. In challenging times, we know how to drive meaningful connections with our consumers.	
[8] As I reflect on the first quarter, there are three key strategic and financial themes that stand out. First, NIKE is recovering faster, fueled by [b]rand momentum and our relentless focus on execution.	

EXHIBIT 3B
NIKE COMMENTARY ON BRAND EQUITY BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
FY 2021 Q2 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (12/18/2020)	
[9] But beyond any one quarter's results, the clear momentum we have right now is evidence of our product innovation and brand strength that allows us to connect with consumers worldwide.	
[10]	Moving to our brand strength, our deep connection with consumers through authentic brand moments of global scale also continues to expand our leadership position. As I said earlier, the strong are getting stronger and our scale is unmatched.
[11]	Simply put, the NIKE brand is strong. We have a scale that's unparalleled and a brand is creating meaningful connections everywhere the swoosh exists. Just look at our results this quarter. Our brand power this year has been second to none.
FY 2021 Q3 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (3/18/2021)	
[12]	Our brand continues to deeply connect all over the world. We remain consumers' number one favorite brand in all 12 of our key cities in both Men's and Women's businesses.
[13]	All over the world, the relationships we have with consumers cannot easily be replicated. Our brand differentiates us driven by the unique competitive advantages that we enjoy. First, NIKE's connections with consumers are driven by sport and cultural authenticity.
[14]	Second, our brand is powered by our global scale. This is a particularly critical advantage as we continue to fuel our digital transformation. ... And fourth, the Jordan Brand had a very strong quarter, growing double-digits in Q3. ... We're incredibly confident about the continued growth opportunity for the Jordan Brand moving forward.
FY 2021 Q4 Earnings Release Conference Call Transcript (6/24/2021)	
[15]	This authentic connection with consumers is also fueled by our belief in redefining how we open access to sport for consumers everywhere. ... And we continue to bring the emotion and power of our brand to life through our Digital ecosystem, which is led by the SNKRS app.
[16]	As I've already said, we enter the fiscal year strong ... confident that our deep consumer connections and brand momentum will continue despite being in a dynamic operating environment.
FY 2022 Q1 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (9/23/2021)	
[17]	Our digital success is evidence of the product innovation, brand strength, and scale that drives our meaningful relationships with consumers as we continue to show momentum against our biggest growth priorities.

EXHIBIT 3B
NIKE COMMENTARY ON BRAND EQUITY BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
[18]	Consumer demand for NIKE remains at an all-time high, and we are confident that our deep consumer connections and brand momentum will continue. However, we are not immune to the global supply chain headwinds that are challenging the manufacture and movement of product around the world.

FY 2022 Q2 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (12/20/2021)

- [19] As I've said before, challenges create opportunity for the strong brands to get stronger. That's what's happening here. And we are now in a much stronger competitive position today than we were 18 months ago. And that trend continues.
- [20] Let me just tell you the foundation with which I say [that NIKE brand in a much stronger competitive position today relative to 18 months ago]. Number one, our brand tracking tells us that our brand is still the number 1 cool and favorite brand in all 12 of our key cities around the world, and it's strengthening, and strengthening against our historical competitors. In fact, the only people that are coming close are technology companies.

FY 2022 Q3 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (3/21/2022)

- [21] Now consumer demand for all three of our brands – Nike, Jordan and Converse – remains incredibly strong. Our growth in the third quarter would have been even higher if we had greater quantities of available inventory to meet marketplace demand.
- [22] NIKE's brand strength and consumer demand remains at an all-time high, and we are confident in our business momentum.

FY 2022 Q4 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (6/27/2022)

- [23] You've heard me say that these are times when strong brands can get stronger, and that has never been more clear than it is today.
- [24] Nike is the #1 cool and #1 favorite brand in all twelve of our key cities around the world, leading as the champion for athletes and sport.
- [25] Despite a dynamic operating environment, NIKE extended its leadership position as Chinese consumers' #1 cool and #1 favorite brand.

FY 2023 Q1 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (9/29/2023)

- [26] Consumers continue to rate us their number one cool and number one favorite brand as we connect directly and deeply with consumers worldwide. No matter the macroeconomic dynamics, no matter the competitive landscape, the NIKE brand, and indeed all three of our brands including Jordan and Converse, have created meaningful relationships with consumers across age, gender, ethnicity, and more.
- [27] To date, we continue to see strong consumer demand for our portfolio of brands across our geographies.

EXHIBIT 3B
NIKE COMMENTARY ON BRAND EQUITY BASED ON QUARTERLY EARNINGS CALLS
OVER THE PERIOD Q3 FY 2020 - Q3 FY 2023

#	Quote
FY 2023 Q2 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (12/20/2022)	
[28] More importantly, our results speak to how we've leveraged our competitive advantages, which include a relentless innovation pipeline, unmatched brands and deep consumer connections to build relative strength and stay ahead of competition.	
[29]	Above all, our Q2 results reinforce our confidence that NIKE's brand and business momentum starts with the value that we create for consumers through our product innovation, deep brand connection and elevated experiences across the marketplace.
[30]	But I think we've been pleased at seeing the year-over-year ASP growth not just in North America, but across all our geographies, and high levels of full price realization in the areas where our consumers are most interested. And it's hard to get access to the products that they desire, which means that from a brand health perspective, even amidst the promotions, the consumer continues to choose NIKE.
FY 2023 Q3 EARNINGS RELEASE CONFERENCE CALL TRANSCRIPT (3/21/2023)	
[31]	Consumer demand for our portfolio of brands remains uniquely strong, fueling unit growth of approximately 10% despite increased macro uncertainty.

Notes & Sources:

Nike's fiscal year ends in May of each calendar year. This exhibit covers quarterly earnings calls from FY 2020 Q3 to FY 2023 Q3, which correspond to the calendar months of December 2019 to February 2023.

- [1]-[2] Nike, Inc., FY 2020 Q3 Earnings Release Conference Call Transcript, March 24, 2020, at pp. 3, 6.
- [3]-[5] Nike, Inc., FY 2020 Q4 Earnings Release Conference Call Transcript, June 25, 2020, at pp. 2, 4.
- [6]-[8] Nike, Inc., FY 2021 Q1 Earnings Release Conference Call Transcript, September 22, 2020, at pp. 2-3, 5.
- [9]-[11] Nike, Inc., FY 2021 Q2 Earnings Release Conference Call Transcript, December 18, 2020, at pp. 2-3.
- [12]-[14] Nike, Inc., FY 2021 Q3 Earnings Release Conference Call Transcript, March 18, 2021, at pp. 2-3.
- [15]-[16] Nike, Inc., FY 2021 Q4 Earnings Release Conference Call Transcript, June 24, 2021, at pp. 4, 13.
- [17]-[18] Nike, Inc., FY 2022 Q1 Earnings Release Conference Call Transcript, September 23, 2021, at pp. 2, 8.
- [19]-[20] Nike, Inc., FY 2022 Q2 Earnings Release Conference Call Transcript, December 20, 2021, at pp. 3, 24-25.
- [21]-[22] Nike, Inc., FY 2022 Q3 Earnings Release Conference Call Transcript, March 21, 2022, at pp. 13, 21.
- [23]-[25] Nike, Inc., FY 2022 Q4 Earnings Release Conference Call Transcript, June 27, 2022, at pp. 5, 11, 16.
- [26]-[27] Nike, Inc., FY 2023 Q1 Earnings Release Conference Call Transcript, September 29, 2023, at pp. 3-4, 15.
- [28]-[30] Nike, Inc., FY 2023 Q2 Earnings Release Conference Call Transcript, December 20, 2022, at pp. 2-3, 8, 27.
- [31] Nike, Inc., FY 2023 Q3 Earnings Release Conference Call Transcript, March 21, 2023, at p. 8.

EXHIBIT 4A

SELECT ANALYST REPORT COMMENTARY ON NIKE SALES PERFORMANCE 2020 - 2022

#	Quote
RBC CAPITAL MARKETS - ROOM TO RUN IN OUR NKES; INITIATING AT OUTPERFORM WITH A \$145 PRICE TARGET (11/11/2020)	
[1]	In the global marketplace, NKE remains the clear market share leader in the attractive athletic category. The Nike brand generated \$36B in revenues (est. \$55B value at retail) last year between footwear and apparel, making up 16% of the global sportswear market all in according to Euromonitor.
[2]	This focus on innovation drives dominance in the key footwear category, as footwear was the only positive category in the most recent quarter -- with sales up 4%, while apparel and equipment were down 8% and 17%, respectively.
[3]	NKE was seeing strong double-digit gains before COVID and has seen a significant uplift during. Indeed, NKE's 1QF21 digital sales growth of 83% CC was an impressive number considering Nike is a ~\$40B company (YoY growth represented ~\$900MM in incremental revenue YoY in 1QF21), but this is the latest in a long string of digital gains. Indeed, NKE has posted currency-neutral digital growth above 35% for the past 8 quarters, and we would expect strong growth in the channel going forward (albeit probably not at 83%+ levels).
PIPER Sandler - EXPECTING STRONG BEAT TO Q3; RAISING ESTIMATES & PRICE TARGET TO \$170 (03/14/2021)	
[4]	While names like NKE have lagged, we see Nike fitting a theme that is permanent post-pandemic--the accelerating casualization of the wardrobe. For Q3, we expect strength in particular out of China as Nike anniversaries lockdowns LY. We are modeling net sales growth of 12% (vs. Street's 9%) and EPS of \$0.77 but expect a strong beat to our EPS.
BOFA GLOBAL RESEARCH - PORT CONGESTION SHIFTS REVENUE INTO F4Q; REITERATE BUY (03/18/2021)	
[5]	Nike (NKE) reported F3Q EPS of \$0.90 (vs. our \$0.72) as revenue was below expectations & increased 2.5% (vs. our 9.5%) primarily as a result of a 3 week delay in inventory supply to N. America wholesale customers given container shortages & West Coast port congestion which caused a 3 week delay in inventory supply primarily in N. America wholesale customers.
[6]	NIKE increased its full year rev. guidance to +low-to-mid teens which includes F4Q revenue of +75.0%. Importantly, we expect NIKE to recapture delayed revenue in F4Q given transit times are slowly improving in N. America and we believe Nike should have sufficient supply to meet the potential surge in demand from fiscal stimulus.
WEBBUSH - EVERYTHING'S GONNA BE ALRIGHT; INITIATE AT OUTPERFORM, PT \$170 (10/04/2021)	
[7]	In an unfortunate turn of events, NKE became the “poster child” for the supply chain issues currently impacting our space, given their exposure to the Vietnamese footwear manufacturing industry (which has almost ground to a halt due to a dramatic surge in COVID cases). However, now that the “bad news” is out in the open, we think it’s time to once again look at the bigger picture. This is one of the apparel/footwear industry’s strongest, best-run companies, with an unmatched track record of innovation that should keep revenues growing at a strong clip for years.
[8]	As a reminder, the company noted that ~80% of the factories making NKE footwear in Vietnam have been closed since July (the company sources over 50% of footwear from this country) and almost half of the apparel factories are closed too. This, coupled with other logjams in the supply chain (port congestion, shipping container availability, etc.) caused the company to guide to Q2 sales flat-to-down (vs. +12% in Q1) and lower FY sales guidance to +MSD (from +LDD prior) -- implying Q3 is also quite challenged before trends start improving in Q4 (but not back to Q1’s growth level).

EXHIBIT 4A
SELECT ANALYST REPORT COMMENTARY ON NIKE SALES PERFORMANCE
2020 - 2022

#	Quote
[9]	Furthermore, since NKE will be supply-constrained in the coming quarters, we believe this will lead to pent-up demand from both consumers and wholesale partners (who will likely experience very lean inventory levels due to this disruption). Thus, when get to the “other side” of this issue, trends will probably overshoot “normal” levels. Thus, we think FY23 could be a very strong sales and margin year.
[10]	While the percent of revenues that the Nike brand generates from company owned e-commerce has more than doubled over the past 2 years (from 10% in FY19 to 21% last year), they expect this penetration ate [sic] to roughly double again by FY25 (to 40%).

UBS EQUITIES - UBS EVIDENCE LAB INSIDE: 2Q22 PREVIEW: DON'T EXPECT A BIG STOCK PRICE MOVE (12/09/2021)

[11] The options market is pricing in a +/- 6.6% jump over the event vs. a 5.4% historical average move. We expect less volatility than 6.6% for two reasons. First, we do not believe Nike will raise its FY22 guidance much. On one hand, Vietnam factories likely opened sooner than what Nike assumed in its guidance and favorable pricing trends suggest potential gross margin upside. On the other hand, a slow recovery in China, ongoing supply chain cost pressures, Omicron-related European lockdowns, and FX headwinds likely limit how much Nike can raise its guidance. Second, we doubt Nike provides new information causing the stock’s near-peak 36x FY2 P/E to move higher. We don’t anticipate any change to the long-term outlook Nike gave two quarters ago.

[12] We have taken down our Q2 sales estimates slightly from 6.5% growth to 5.9% due to FX, continued slow growth in China and slow EU sales in November, although this was partially offset by channel checks suggest strong demand almost everywhere else ... We also drop sales estimates slightly in 3Q from 1.6% to 0.4% and 4Q from 5.3% to 4.3% for mostly the same reasons.

UBS EQUITIES - UBS EVIDENCE LAB INSIDE: 3Q22 PREVIEW: EXPECT A NEGATIVE CATALYST (03/13/2022)

[13] Nike has three sales growth drivers – 1) industry tailwinds; 2) [m]arket share gains; and 3) [c]hannel mix shift. We believe the market doesn’t fully appreciate how Nike’s investments in product innovation, supply chain, and eCommerce are working in concert to drive unit growth and ASP increases.

[14] We are fine-tuning our 3Q sales estimates slightly to 2.6% from 1.3% growth previously due to channel checks suggesting strong demand in North America and Western Europe. ... Plus, we think NKE prioritizing inventory in its own channels should aid sales, as well. We lower our 4Q sales estimates to -0.4% from 4.9% as we think supply constraints and macro challenges will weigh on sales more than we had previously anticipated.

[15] Nike is a revenue growth and DTC-led gross margin expansion story. Nike’s growing international addressable market, industry-leading innovation engine, and far-reaching distribution capabilities give us confidence in our 12% sales growth CAGR estimate.

JEFFERIES - SNEAKER WARS: NKE DOMINATING WEB DATA, LOWERING ESTS. DUE TO MACRO UNCERTAINTY (03/16/2022)

[16] We are lowering our F’22 revenue estimates for NKE as a result of rising concerns around consumer and overall economic strength in Europe. We view inflation, increasing oil prices, a weakened Euro, and rising geopolitical risk as near- to medium-term headwinds that will likely impact sales in the EMEA and APLA regions.

[17] Supported by a growing appreciation for health and wellness and casual lifestyles, NKE’s business and brand are strengthening globally, and we expect that the company’s continued emphasis on digital should lead to share gains ahead.

EXHIBIT 4A
SELECT ANALYST REPORT COMMENTARY ON NIKE SALES PERFORMANCE
2020 - 2022

#	Quote	
UBS EQUITIES - UBS EVIDENCE LAB INSIDE: 4Q22 PREVIEW: WE THINK THE STOCK WILL RISE OVER EARNINGS; BUY (06/15/2022)		
[18] We think Nike will grow at a [+ high single digit - low double digit]% annual rate. Nike has three sales growth drivers – 1) industry tailwinds; 2) [m]arket share gains; and 3) [c]hannel mix shift. We believe the market doesn't fully appreciate how Nike's investments in product innovation, supply chain, and eCommerce are working in concert to drive unit growth and ASP increases.		
[19]	We are lowering our 4Q sales estimates slightly to -3.6% from -2.3% growth previously due to concerns over the impact of lockdowns in China in April and May. These lockdowns lasted longer than we expected. At the same time, we think Nike continues to drive business through its DTC channel which we think will support sales.	
[20]	We forecast a 13% 5-year EPS CAGR, led by 8% annual revenue growth, ~30 bps operating margin expansion per year, and a -1.5% annual share count reduction. Nike is a revenue growth and DTC-led gross margin expansion story. Slowdown in China sales prove to be a short-term headwind, but Nike's industry-leading innovation engine, and far-reaching distribution capabilities give us confidence in our long-term growth estimates.	
JEFFERIES - SNEAKER WARS: NKE CONTINUES TO LEAD THE WAY; UAA'S CURRY FLOW STILL POPULAR (06/27/2022)		
[21]	Today after market close, Nike reports its F'4Q results. We expect above consensus results, though Europe and China could remain a headwind as COVID restrictions linger. Additionally, Nike has officially exited Russia (represents <1% of sales). We expect to get updates on the supply chain, inventory position, brand demand, and investments in Direct and Digital.	
JEFFERIES - SNEAKER WARS: JUNE WEB DATA REMAINED STRONG FOR NKE DESPITE MACRO HEADWINDS (07/22/2022)		
[22]	During NKE's 4Q earnings call, mgmt noted that 1Q real dollar revenue growth is expected to be flat to slightly up Y/Y due to COVID in Greater China and >500bps impact from FX. Additionally, mgmt expects GM pressure to exceed 100bps in 1Q as the company reconsiders supply and demand in Greater China. NKE also anticipates higher promotional activity to sell seasonal inventory that has arrived late.	
WEBBUSH - JUST KICKIN' IT: SNEAKER TRACKER, SEP22; LOWER NKE ESTS ON FX & JORDAN SLOWDOWN (09/09/2022)		
[23]	Nike will report fiscal 1Q23 EPS on 9/29, and though they are one of the strongest brands and companies in our coverage, they are not immune to macro challenges. Since they last reported, we see three key headwinds that have emerged: a stronger U.S. dollar (we now forecast a 6-point sales headwind this year vs. 4 points prior), elevated promotional activity in the wholesale channel, and slower sell-out rates for the Jordan brand (10 of the past 14 Jordan launches have yet to sell out, dating back to late-July product). We believe that supply chain challenges over the LTM have led to a flurry of product reaching store shelves/e-commerce sites just as demand is starting to be negatively impacted by inflation/macro headwinds (resulting in a temporary supply/demand imbalance). We'd also note that the China recovery remains uncertain, given that new lockdowns continue to be implemented in that region (e.g. 21 million residents in Chengdu currently locked-down). On a positive note, the Nike-specific promos in the U.S. wholesale channel (which we called out in last month's edition of the "Just Kickin' It" series) appear to have drawn to a close, so perhaps the recent promos were effective at "cleaning up" inventory in the channel.	

EXHIBIT 4A
SELECT ANALYST REPORT COMMENTARY ON NIKE SALES PERFORMANCE
2020 - 2022

#	Quote
[24]	We'd also note that we've seen a consistent trend of Jordan and Dunk launches not selling-out or selling below retail in the aftermarket. For example, recent releases of popular silhouettes such as the Air Jordan 1, Air Jordan 5, and Air Jordan 13 have still not sold out in all sizes, despite releasing last month. This is unusual for retro Jordan launches (which usually sell out within a day), and might confirm signs of macro/inflation pressure on sneaker buyers, or "launch fatigue". While only a small sample size, there might be cracks starting to appear in the Jordan Brand.

RBC CAPITAL MARKETS - WINNING MINDSET - INITIATE AT OUTPERFORM (09/22/2022)

[25] Our view: Nike is the 100lb gorilla in sportswear with #1 market share, leading product franchises, and a Digital business that will drive future growth.
... DTC business model shift accretion - We forecast +12% DTC revenue CAGR vs +5% wholesale CAGR.

[26] Nike margins should benefit from DTC shift, pricing and China recovery predominantly in the coming years.

[27] China is one of Nike's major markets, and constitutes 17% revenue and 20% EBIT (FY22). Greater China contribution to incremental revenue/EBIT growth was 22%/28% between FY12- 22, making it one of the most relevant markets in delivering historic growth for Nike Brand. Since 2020, the operating environment in China for Nike and other western sporting goods brands has deteriorated, for two key reasons: 1) COVID-19 lockdown disruption, 2) Better Cotton Initiative consumer boycott of western sporting goods brands (March '21). The latter of these has enabled local Chinese sporting brands to accelerate growth at the expense of international brands.

[28] Recall, Nike is targeting mid-term full price sell-through rate of 65%, which was exceed in FY22 where it delivered ~70% full price sell-through in all major markets except Greater China, implying a modest step down as the wider sportswear market benefits from improving product supply and potential normalization of demand post COVID-19.

Notes & Sources:

This exhibit is based on commentary from 20 analyst reports selected from Refinitiv based on three criteria: (i) published between 2020 and 2022, (ii) cover Nike, and (iii) contain the keywords "secondary market" and/or "resale market."

[1]-[3] Room to Run in Our NKEs; Initiating at Outperform with a \$145 Price Target, RBC Capital Markets, November 11, 2020, at pp. 9, 15, 21.
[4] Expecting Strong Beat to Q3; Raising Estimates & Price Target to \$170, Piper Sandler, March 14, 2021, at p. 1.
[5]-[6] Port Congestion Shifts Revenue into F4Q; Reiterate Buy, BofA Global Research, March 18, 2021, at pp. 1, 3.
[7]-[10] Everything's Gonna Be Alright; Initiate at Outperform, PT \$170, Wedbush, October 04, 2021, at pp. 1, 3-5.
[11]-[12] UBS Evidence Lab Inside: 2Q22 Preview: Don't Expect a Big Stock Price Move, UBS Equities, December 9, 2021, at pp. 1, 4.
[13]-[15] UBS Evidence Lab Inside: 3Q22 Preview: Expect a Negative Catalyst, UBS Equities, March 13, 2022, at pp. 3, 5, 30.
[16]-[17] SNEAKER WARS: NKE Dominating Web Data, Lowering Ests. Due to Macro Uncertainty, Jefferies, March 16, 2022, at pp. 3, 13.
[18]-[20] UBS Evidence Lab Inside: 4Q22 Preview: We Think the Stock Will Rise Over Earnings; Buy, UBS Equities, June 15, 2022, at pp. 3, 5, 32.
[21] SNEAKER WARS: NKE Continues to Lead the Way; UAA's Curry Flow Still Popular, Jefferies, June 27, 2022, at p. 1.
[22] SNEAKER WARS: June Web Data Remained Strong for NKE Despite Macro Headwinds, Jefferies, July 22, 2022, at p. 1.
[23]-[24] Just Kickin' It: Sneaker Tracker, Sep22; Lower NKE Ests on FX & Jordan Slowdown, Wedbush, September 9, 2022, at pp. 1, 10.
[25]-[28] Winning Mindset - Initiate at Outperform, RBC Capital Markets, September 22, 2022, at pp. 1-2, 11, 33.

EXHIBIT 4B
SELECT ANALYST REPORT COMMENTARY ON NIKE BRAND EQUITY AND CUSTOMER RETENTION
2020 - 2022

Quote

RBC CAPITAL MARKETS - ROOM TO RUN IN OUR NKES; INITIATING AT OUTPERFORM WITH A \$145 PRICE TARGET (11/11/2020)

- [1] Our view: We see NKE as a best-in-class global athletic play, with its Consumer Direct Acceleration strategies supporting a multi-year mid-highteens EPS CAGR through FY26.
- [2] Analyzing the content of posts related to sporting goods brands from blogs and news sources Twitter, Reddit, Tumblr, YouTube, and many others, Nike once again shows dominance. Since 2015, Nike has roughly 2x the volume of mentions as ADS, 5x that of PUM, and 19x UAA. Counting strictly 'positive' mentions (blog posts, articles, or tweets classified by Brand Watch's natural language processing algorithm as having positive sentiment), Nike has roughly 2x the volume of ADS, 4x of PUM, and 17x UAA.
- [3] Social media mentions show consumers engaging with the brand even more during the COVID crisis. As shown below, NKE has grown its share of total mentions since January 2019 by 35% to nearly 1.8MM in October. Over the past six months, NKE has had ~2.0 MM mentions on average, up 25% from the same six-month period last year. Comparing October YoY, NKE saw total mentions rise 25%. We expect the increase in part speaks to growing customer affinity and loyalty to the brand during the crisis.
- [4] We also note that with collaborations with streetwear brands such as Off-White (sneaker #1 below), the Nike brand all in continues to build hype and fashion resonance in the more casual, retro, and Streetwear marketplace.
- [5] At a higher level with over 247MM members on Nike's apps globally, this represents a treasure trove of digital engagement and customer insight across those members. The company has noted that digital members spend 3x compared to customers on Nike.com, and that customers on 2+ Nike platforms are 4x more valuable—speaking to the lifetime value of customers on the membership program.
- [6] The company noted recently that its growth in buying members YoY via its membership programs outpaced active members, which also outpaced new members.

PIPER SANDLER - EXPECTING STRONG BEAT TO Q3; RAISING ESTIMATES & PRICE TARGET TO \$170 (03/14/2021)

- [7] Peer reads from retailers like Foot Locker (~70% of sales are Nike) underscore the strength of basketball/brand Jordan domestically.

BOFA GLOBAL RESEARCH - PORT CONGESTION SHIFTS REVENUE INTO F4Q; REITERATE BUY (03/18/2021)

- [8] We believe NKE continues to benefit from a strong product led by classic footwear franchises incl. Air Force 1, Air Jordan 1, & Retro Jordan & more recently Nike Blazer & Nike Dunk. We believe Nike's current product momentum is supported by its return to a dominant position in the resale market as we estimate its market share increased to 76% of total GMV in 2020 (based on top 1000 footwear styles on StockX) up from 66% in 2019.

UBS EQUITIES - UBS EVIDENCE LAB INSIDE: 2Q22 PREVIEW: DON'T EXPECT A BIG STOCK PRICE MOVE (12/09/2021)

- [9] Despite the lackluster near-term set-up, we continue to believe Nike will be a long-term global share taker (including within China) and outperform over the NTM.

EXHIBIT 4B
SELECT ANALYST REPORT COMMENTARY ON NIKE BRAND EQUITY AND CUSTOMER RETENTION
2020 - 2022

Quote

UBS EQUITIES - UBS EVIDENCE LAB INSIDE: 3Q22 PREVIEW: EXPECT A NEGATIVE CATALYST (03/13/2022)

[10] Is athleisure still a strong trend? Yes. We forecast 6%-7% global growth, with developing markets contributing a disproportionate share of the gains. Athleisure is still about comfortable and casual attire, but is moving away from “performance” to more “streetwear” styles. Fortunately for Nike, sneakers are at the center of streetwear culture and consumers accept it as a streetwear brand.

[11] Our checks on NKE’s key US wholesale partners provide positive read-throughs for the company’s overall sales and relationships with key customers.

JEFFERIES - SNEAKER WARS: NKE DOMINATING WEB DATA, LOWERING ESTS. DUE TO MACRO UNCERTAINTY (03/16/2022)

[12] As of March 8th, 2022, Nike was the #4 free app on the Apple App Store in the shopping category. Additionally, Nike’s SNKRS app ranked #17. We believe consumers are strongly engaged with Nike, as these two apps are consistently ranked in the top 20 on the Apple App Store.

[13] Supported by a growing appreciation for health and wellness and casual lifestyles, NKE’s business and brand are strengthening globally, and we expect that the company’s continued emphasis on digital should lead to share gains ahead.

UBS EQUITIES - UBS EVIDENCE LAB INSIDE: 4Q22 PREVIEW: WE THINK THE STOCK WILL RISE OVER EARNINGS; BUY (06/15/2022)

[14] We believe Nike has the brand strength, strategy, skills, and resources to outperform peers through a potential recession.

[15] Our checks on NKE’s key US wholesale partners provide generally positive read-throughs for the company’s overall sales and relationships with key customers. Overall, it seems growth in the sector is still growing despite tough compares.

[16] Nike’s strength across the rest of the world is underestimated.

JEFFERIES - SNEAKER WARS: NKE CONTINUES TO LEAD THE WAY; UAA’S CURRY FLOW STILL POPULAR (06/27/2022)

[17] Nike has amassed over 45% market share in web visits in eight out of the past 12 months. Foot Locker and Finish Line have gradually lost share, while Nike and StockX have gained.

[18] We track the top 60 sellers on the [Footlocker] and [Dick’s Sporting Goods] websites. Nike has an overwhelming majority share as it makes up ~61% of the top 60 sellers at FL and ~49% at DKS, on average, across both men’s and women’s.

[19] In May, search interest for Nike was up ~4% Y/Y and down ~5% M/M. Additionally, search interest for Air Jordan was flat Y/Y and down ~4% M/M. Despite inflationary-related headwinds and the industry lapping stimulus spending, we are encouraged by recent Y/ Y trends. On a relative basis, Nike has held a substantial lead in search interest since at least January 2020.

JEFFERIES - SNEAKER WARS: JUNE WEB DATA REMAINED STRONG FOR NKE DESPITE MACRO HEADWINDS (07/22/2022)

[20] As of July 20th, 2022, Nike was the #5 (vs. #7 in prior note) free app on the Apple App Store in the shopping category. We believe consumers are strongly engaged with Nike, as its app is consistently ranked in the top 10 on the Apple App Store.

[21] Nike has amassed over 45% market share in web visits in 11 out of the past 12 months. Foot Locker and Finish Line have gradually lost share, while Nike and StockX have gained. In June, Nike achieved 47% market share, down from May’s two-year high of 50%. Under Armour’s market share has stayed fairly consistent in the 4%-5% range.

EXHIBIT 4B

**SELECT ANALYST REPORT COMMENTARY ON NIKE BRAND EQUITY AND CUSTOMER RETENTION
2020 - 2022**

#	Quote
[22]	We track the top 60 sellers on the FL and DKS websites. In July thus far, Nike continues to have an overwhelming majority share as it makes up ~65% of the top 60 sellers at FL and ~52% at DKS, on average, across both men's and women's.
WEBBUSH - JUST KICKIN' IT: SNEAKER TRACKER, SEP22; LOWER NKE ESTS ON FX & JORDAN SLOWDOWN (09/09/2022)	
[23]	Over the long run, however, we continue to view [Nike] as a high-quality brand in a structurally strong athletic space.
[24]	In recent years, the Jordan sub-brand has been extremely hot for NKE, with most launches over the past 3-4 years selling out the same day they are released (often in minutes).
[25]	Beginning in July, however, we've seen some launches that have taken longer to sell out. ... There are a few reasons why sell-through rates may have slowed: the sheer number of launches (over 50 launches YTD) may have become overwhelming to sneakerheads, the deteriorating macro environment may be pressuring demand, or the "story-telling" around these launches might be lacking (just new colors of frequently-launched silhouettes). Whatever the reason, we think this may be a near-term headwind for NKE, until the heat around the Jordan brand is reinvigorated.
[26]	Up YoY is the Dunk collection, which has 9 slated releases thus far compared to seven last year. Similar to Jordans, the brand heat of the product is actually slightly lower than last year, but is holding up much better in the resale market than the Jordan Brand is. While a few pairs released this month have released previously, resale premiums are still strong considering the existing supply in the market.
RBC CAPITAL MARKETS - WINNING MINDSET - INITIATE AT OUTPERFORM (09/22/2022)	
[27]	We believe this starts with product – [Nike] has the broadest and arguably strongest lifestyle footwear franchises ('icons') which is complimented by 'innovation' in Performance categories.
[28]	From a market share perspective, at global level, Nike has successfully maintained its dominance over decades, particularly in Sports Footwear.
[29]	From a consumer perspective, NIKE's DTC strategy will drive greater direct engagement with consumers including through its membership services, and across channels including NIKE stores, NIKE online and NIKE's app ecosystem. The lifetime value of a member customer can be 2-3x higher compared to a single purchase customer we estimate.
[30]	Recent website traffic data has accelerated in a visible way for Nike. Total website visits for Nike is growing ~45% yoy in 2022 YTD, versus adidas 14% and Puma 9%, whilst in terms of unique visits, Nike is growing at ~40% in 2022 YTD, which compares to 8% yoy growth for adidas and 10% yoy growth for Puma.
[31]	Nike also appears to be gaining new Instagram followers at a pace that is materially above peers (~40% yoy) although the trend line is moderating slightly.
[32]	Nike has structural competitive advantages which justify its #1 market share position but also underpin its growth potential in the future. This relates first to product, with the broadest and arguably strongest lifestyle footwear franchise line-up across Nike, Air Jordan and Converse brands.

EXHIBIT 4B
SELECT ANALYST REPORT COMMENTARY ON NIKE BRAND EQUITY AND CUSTOMER RETENTION
2020 - 2022

#	Quote
	JEFFERIES - SNEAKER WARS/F'10 PREVIEW: NKE ON TOP, BUT LOWERING EST. ON WEAKER MACRO (09/23/2022)
[33]	Google search interest for the Nike Dunk and Adidas Yeezy reached an all-time high for both sneaker lines. We believe that the interest in these popular items will continue to bolster sales for NKE and Adidas, even if other lines and categories' demand slumps due to macro pressures.
[34]	From our view, NKE appears to be winning the “sneaker war” and we maintain our LT “BUY” rating based on the company’s track record of innovation and maintaining cultural relevancy.
[35]	As of September 14th, 2022, Nike was the #7 free app on the Apple App Store in the shopping category. Nike’s SNKRS app also ranked #11. We believe that the app is a strong customer engagement tool for Nike, as both these apps are consistently ranked in the top 20 on the Apple App Store.
[36]	Mgmt has highlighted that the app is a key component in their strategy to engage and retain customers.
[37]	Supported by a growing appreciation for health and wellness and casual lifestyles, NKE’s business and brand are strengthening globally, and we expect that the company’s continued emphasis on digital should lead to share gains ahead.

Notes & Sources:

This exhibit is based on commentary from 20 analyst reports selected from Refinitiv based on three criteria: (i) published between 2020 and 2022, (ii) cover Nike, and (iii) contain the keywords “secondary market” and/or “resale market.”

[1]-[6] Room to Run in Our NKEs; Initiating at Outperform with a \$145 Price Target, RBC Capital Markets, November 11, 2020, at pp. 1, 11-12, 17, 22-23.

[7] Expecting Strong Beat to Q3; Raising Estimates & Price Target to \$170, Piper Sandler, March 14, 2021, at p. 1.

[8] Port Congestion Shifts Revenue into F4Q; Reiterate Buy, BofA Global Research, March 18, 2021, at p. 1.

[9] UBS Evidence Lab Inside: 2Q22 Preview: Don't Expect a Big Stock Price Move, UBS Equities, December 9, 2021, at p. 1.

[10]-[11] UBS Evidence Lab Inside: 3Q22 Preview: Expect a Negative Catalyst, UBS Equities, March 13, 2022, at pp. 3, 6.

[12]-[13] SNEAKER WARS: NKE Dominating Web Data, Lowering Ests. Due to Macro Uncertainty, Jefferies, March 16, 2022, at pp. 5, 13.

[14]-[16] UBS Evidence Lab Inside: 4Q22 Preview: We Think the Stock Will Rise Over Earnings; Buy, UBS Equities, June 15, 2022, at pp. 1, 6, 7.

[17]-[19] SNEAKER WARS: NKE Continues to Lead the Way; UAA's Curry Flow Still Popular, Jefferies, June 27, 2022, at pp. 3-5.

[20]-[22] SNEAKER WARS: June Web Data Remained Strong for NKE Despite Macro Headwinds, Jefferies, July 22, 2022, at pp. 2-4.

[23]-[26] Just Kickin' It: Sneaker Tracker, Sep22; Lower NKE Ests on FX & Jordan Slowdown, Wedbush, September 9, 2022, at pp. 1-2, 10.

[27]-[32] Winning Mindset - Initiate at Outperform, RBC Capital Markets, September 22, 2022, at pp. 2, 11, 20, 32, 51.

[33]-[37] SNEAKER WARS/F'20 Preview: NKE on Top, But Lowering Est. on Weaker Macro, Jefferies, September 23, 2022, at pp. 1, 4, 16.

EXHIBIT 4C
SELECT ANALYST REPORT COMMENTARY ON STOCKX AND THE RESALE MARKETPLACE
2020 - 2022

Quote

EVERCORE ISI - GLIMPSE INTO DIGITAL ADVANTAGE - JORDAN 11 ADAPT LIVESTREAM LAUNCH YESTERDAY (12/23/2020)

- [1] First lesson we learned is that we should have copped a pair [of Jordan 11 Adapt] when we had the chance. We hesitated on pulling the trigger on the \$500 pair, then the link disappeared and now they're selling for \$1300 on StockX (argh!).
- [2] Lastly, these types of events train viewers to keep coming back. A chance to cop the hottest shoe not available anywhere else? A chance to make a \$800 profit (before commissions to StockX) in the secondary market? You can bet viewers will keep themselves tuned to their SNKRS app newsfeeds.

PIPER Sandler - EXPECTING STRONG BEAT TO Q3; RAISING ESTIMATES & PRICE TARGET TO \$170 (03/14/2021)

- [3] In CQ4 (which includes part of Nike's FQ3), 9 of the top-10 most expensive sneakers traded in the secondary market were Nike per Highsnobiety underscoring the undeniable brand heat.

BOFA GLOBAL RESEARCH - PORT CONGESTION SHIFTS REVENUE INTO F4Q; REITERATE BUY (03/18/2021)

- [4] We believe Nike's current product momentum is supported by its return to a dominant position in the resale market as we estimate its market share increased to 76% of total GMV in 2020 (based on top 1000 footwear styles on StockX) up from 66% in 2019.

JEFFERIES - RETAIL DETAILS VOL. 27: NKE'S RECYCLING PROGRAM, INV./SALES, NEW VS AD CAMPAIGN (04/18/2021)

- [5] We believe that all [customers] should evaluate ways to participate in the refurbishment/resale markets. In our recent deep dive on the resale market, we called out Nike as performing well on third-party resale platforms. ... While NKE is not the first to test refurbishment, it is one of the earlier adopters, and we expect more [customers] to join in over the near term, given both the environmental and financial benefits.

WEBBUSH - EVERYTHING'S GONNA BE ALRIGHT; INITIATE AT OUTPERFORM, PT \$170 (10/04/2021)

- [6] The [e]mergence of the [r]esale [m]arket is a [k]ey [p]ositive for Nike[.] One of the aspects of the sneaker market that we find so compelling is the fact that it's about more than just utility – it's a category where many people are extremely passionate, and it's one of the biggest vehicles of self-expression for the millions of "sneakerhead" customers around the world. When coupled with the scarcity model that many brands utilize (purposely restrict supply below actual demand levels to drive exclusivity and "brand heat"), this has led to the emergence of the resale market for sneakers. And there's something unique about sneaker resale – unlike the secondary market for other softlines categories (e.g., luxury, apparel, etc.), most of the sneakers that get re-sold do so at a premium above the original retail price. Thus, there's an entrepreneurial aspect to selling sneakers as well – a sneakerhead can buy a pair of sneakers for the original \$100-\$200, and depending on the style, can sell it online for upwards of \$1,000 in some cases.

EXHIBIT 4C
SELECT ANALYST REPORT COMMENTARY ON STOCKX AND THE RESALE MARKETPLACE
2020 - 2022

#	Quote
UBS EQUITIES - UBS EVIDENCE LAB INSIDE: 2Q22 PREVIEW: DON'T EXPECT A BIG STOCK PRICE MOVE (12/09/2021)	
[8]	One indicator of how the impact of last spring's boycotts continues is in the China resale market. On resale platforms, Nike products have shown a median discount of -29%, while some domestic brands have shown discounts of -22%. Experts we've spoken with indicate this is a relatively unusual trend. At the same time, most believe Nike will recover over the next 1-2 years due to its superior technology, innovation, marketing capabilities, scale, and resources.
JEFFERIES - SNEAKER WARS: NKE DOMINATING WEB DATA, LOWERING ESTS. DUE TO MACRO UNCERTAINTY (03/16/2022)	
[9]	Nike's website has sustained a commanding lead in web visits on other brands and retailers such as StockX, Adidas, Under Armour, and Foot Locker over the past 2+ years. In February, Nike.com drove 98.7M web visits, up ~5% Y/Y and down ~9% M/M, according to data from similarweb.com. The website with the second most web visits (that we tracked) was stockx.com. In February, stockx.com saw 28.5M web visits, up ~8% Y/Y and down ~12% M/M. Though Nike doesn't directly compete with StockX, we are encouraged by the site's positive Y/Y trends as we believe this indicates consumers are continuing to engage with brands, particularly Nike and Jordan, in the resale market.
JEFFERIES - SNEAKER WARS: JUNE WEB DATA REMAINED STRONG FOR NKE DESPITE MACRO HEADWINDS (07/22/2022)	
[10]	Nike's website has sustained a commanding lead in web visits vs. other brands and retailers such as StockX, Adidas, Under Armour, and Foot Locker over the past 2+ years. In June, Nike.com drove ~117M web visits, up ~7% Y/Y and down ~8% M/M, according to data from similarweb.com. The website with the second most web visits (that we tracked) was stockx.com. In June, stockx.com saw ~30M web visits, down ~15% Y/Y and ~7% M/M. Though Nike doesn't directly compete with StockX, we are encouraged by the site's popularity as we believe this indicates consumers are continuing to engage with brands, particularly Nike and Jordan, in the resale market.
EVERCORE ISI - METAVERSE PRODUCTS TAKING SHAPE, LITERALLY? (07/26/2022)	
[11]	The article also hints at other ways virtual products can be monetized. For example, because of the way that NFTs can utilize smart contracts, any future second-hand sales of the hottest digital assets can generate incremental revenue for the original creator and for any content partners. This means Nike would actually be able to share in the monetization of the already very large and still fast-growing secondhand market for its products. Today, with physical sneakers in the physical world, Nike does not participate in any of the upside of the resale market.
WEBBUSH - JUST KICKIN' IT: SNEAKER TRACKER, SEP22; LOWER NKE ESTS ON FX & JORDAN SLOWDOWN (09/09/2022)	
[12]	Overall for August, we saw 22 products that sold out and are trading at premiums in the resale market, which is down from last August's 25 "hot" launches (with a much lower resale price premium of ~50% this year vs. more than 100% last year). Notably, this figure excludes the various Jordan launches that did not sell out and are trading below retail prices in the secondary market. Looking ahead, Nike is definitely planning to keep the launch volume high: as of this writing, we see 28 planned "high heat" launches from Nike (flat YoY), across Jordans, Dunks, Air Maxes, Air Force 1s, and other silhouettes. While they have a lot of launches planned, August shows that the consumer might not necessarily flock to the products, so it will be interesting to see if these products start selling out again, or if August's slower Jordan-brand sell-throughs continue.

EXHIBIT 4C
SELECT ANALYST REPORT COMMENTARY ON STOCKX AND THE RESALE MARKETPLACE
2020 - 2022

#	Quote
	RBC CAPITAL MARKETS - WINNING MINDSET - INITIATE AT OUTPERFORM (09/22/2022) [13] What differentiates Nike is the depth and breadth of its icon franchises in footwear, which we believe to be one of the main drivers of its market share leadership. Within Nike brand, its Air Max 1, Air Max 90, Air Max 97, Cortez, Air Force 1, Air Huarache, Air Vapor Max, are market leading franchises. Taking into account Air Jordan, which is arguably a brand within a brand – Air Jordan 1,3,6,11 are the most popular, however many others are collectibles with high retail and even higher resale market prices.

Notes & Sources:

This exhibit is based on commentary from 20 analyst reports selected from Refinitiv based on three criteria: (i) published between 2020 and 2022, (ii) cover Nike, and (iii) contain the keywords “secondary market” and/or “resale market.”

[1]-[2] Glimpse into Digital Advantage - Jordan 11 Adapt Livestream Launch Yesterday, Evercore ISI, December 23, 2020, pp. 1, 2. This commentary is about a SNKRS event, a special release event organized by Nike through its SNKRS app and website. These events are often used to release highly coveted limited edition sneakers. Furness, J., "SNKRS Day 2022: What to Know About Nike's In-App Event," Esquire, August 8, 2022, available at <https://www.esquire.com/uk/style/fashion/g40817209/snkrs-day-2022/>, accessed May 1, 2023.

[3] Expecting Strong Beat to Q3; Raising Estimates & Price Target to \$170, Piper Sandler, March 14, 2021, at p. 1.

[4] Port Congestion Shifts Revenue into F4Q; Reiterate Buy, BofA Global Research, March 18, 2021, at p. 1.

[5] Retail Details Vol. 27: NKE's Recycling Program, Inv./Sales, New VS Ad Campaign, Jefferies, April 18, 2021, at p. 1.

[6]-[7] Everything's Gonna Be Alright; Initiate at Outperform, PT \$170, Wedbush, October 4, 2021, at pp. 9, 11.

[8] UBS Evidence Lab Inside: 2Q22 Preview: Don't Expect a Big Stock Price Move, UBS Equities, December 9, 2021, at p. 5.

[9] SNEAKER WARS: NKE Dominating Web Data, Lowering Ests. Due to Macro Uncertainty, Jefferies, March 16, 2022, at p. 5.

[10] SNEAKER WARS: June Web Data Remained Strong for NKE Despite Macro Headwinds, Jefferies, July 22, 2022, at p. 2.

[11] Metaverse Products Taking Shape, Literally?, Evercore ISI, July 26, 2022, at p. 1.

[12] Just Kickin' It: Sneaker Tracker, Sep22; Lower NKE Ests on FX & Jordan Slowdown, Wedbush, September 9, 2022, at p. 1.

[13] Winning Mindset - Initiate at Outperform, RBC Capital Markets, September 22, 2022, at p. 29.

